University of Alberta

Fostering Change:
The Case of the Commission On Employment Equity

by

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ABSTRACT

This dissertation explores in detail the role and influence of the Royal Commission on Employment Equity in changing the manner in which employment benefits are allocated in Canada. It records how certain ideas prevalent at the time informed both the work of the Commission and the positions taken by a variety of interests on the issue of workplace affirmative action. It also portrays how the interaction of these ideas and the interests who both espoused and opposed them resulted not only in affecting a fundamental public policy change in Canada but also how that interaction served to shape all subsequent public discourse with respect to the allocation of employment benefits in the country.

Specifically, it considers the following questions: What were the ideas which inspired the movement to enact employment equity legislation and what prompted the government of the day to adopt this legislation? What bodies or individuals defined the issue of workplace affirmative action? What were the roles and influence of the country's administrative and political institutions in this process? And lastly, what were the characteristics of the legislation which emerged as a result?

This dissertation also explores the question of what prompted the government of the day to adopt many, but not all, of the Commission's recommendations. It is argued here that it was the presence of two co-existing and contending social and political discourses. The first was, and is, interventionist in orientation and envisages a significant role for the state in the economic and social affairs of the nation. The second relies on markets to attend to economic matters and on the actions of free individuals to deal with social issues and opposes the establishment of a strong interventionist state. The success of the Abella Commission in introducing legislated workplace affirmative action in Canada is evidence of the influence of the first. A testimonial to the power of the second is the decision by almost all governments in the last decade of the twentieth century to strip the state of many of its institutions and to downsize the remainder.

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Chapter One

FOSTERING CHANGE

Legislating Change

On August 13, 1986, the Government of Canada, following a decade of intensive lobbying by a multitude of interest groups, and in keeping with the recommendations of its 1983 Royal Commission on Equality in Employment,[1] proclaimed its Employment Equity Act. This legislation arguably marked the advent of the most basic change in public policy governing employer-employee relations in Canada since the official recognition in law of the existence and role of trade unions in the workplace in the late nineteenth and early twentieth centuries legitimized collective bargaining and provided for an important regulatory role for the state in employer-employee relations. That earlier state involvement regulated the dealings between employers and their employees with respect to matters dealing with layoffs, recalls, working conditions, and wages and other benefits resulting from collective bargaining between the parties. Except for the recall provisions in collective agreements, it did not, however, challenge employers' practices with respect to bringing workers into the enterprise in the first place. The Employment Equity Act alters that in two related aspects. First, it requires employers subject to its provisions to ensure that the makeup of their workforces reflects the demographic profile of the labour force from which they draw their workers. Second, it authorizes the state to regulate employers' hiring and promotion practices and designates a state agency to enforce this, and provides for heavy fines for non-compliance. In effect, it empowers the state to determine how federally regulated employers and those captured by its associated contract compliance measures recruit, train, and promote their employees. This addition to the state's involvement in regulating the workplace represents a basic shift in public policy in Canada.

This dissertation attempts to explain what prompted the federal government of the day to introduce this policy change. More specifically, I argue that the Abella Royal Commission played a significant role in the formulation of the Employment Equity Act by articulating a coherent and vindicative public philosophy with respect to workplace affirmative action, by devising a viable model for implementing that philosophy, and by attracting a supporting coalition of pressure groups, elected officials, and bureaucrats. In doing this, I seek to answer the following related questions. First, what served to shape the interventionist recommendations of the Abella Commission? Second, what moved the government to adopt many, but not all, of them?

Research and Format Decisions

The research for this project reflects the decision to limit the scope of the investigation to only those events and processes which culminated in the enactment of the Employment Equity Act in 1986 and its amendment a decade later. It is grounded on an examination of the records of the Abella Commission held by the National Archives of Canada, on documents dealing with the introduction of the Employment Equity Act and its amendments provided by the Department of Human Resources Development Canada[2] and a review of the relevant editions of Hansard. In addition, there was an extensive review of the literature pertaining to affirmative action as a public policy issue and of the role and influence of royal commissions in Canada as shapers of public policy.

No interviews were conducted as part of this research. The reason for this was that enough time had elapsed between the events culminating in the enactment of the legislation and the time the research was conducted so that relying on the memories of the actors involved could have yielded inconclusive or contradictory information. This was confirmed by one of the senior public servants responsible for developing and managing the government's initial employment equity program who was reluctant to answer questions about the process on the grounds that too much time had passed to allow for an accurate recollection of the details of those events. Also, a request to Justice Abella for clarification on some of the details of her work as commissioner went unanswered.

Throughout this dissertation I employ the terms "affirmative action," "workplace affirmative action," or "employment equity" synonymously. Partly, this is to avoid the needless repetition of a single term throughout the text. Partly, it is to take into account the fact that much of the material reviewed here which was produced prior to the release of the Abella Commission's report referred to state action on behalf of designated group members as "affirmative action." Partly, it is because Justice Abella herself acknowledged that: "No great principle is sacrificed in exchanging phrases of disputed definition for newer ones that may be more accurate and less destructive of reasoned debate."[3] But it is also because at the implementation level, the label given to the action to be taken resulting from the legislation has little or no effect on outcomes. However, that being said, I acknowledged that on a conceptual level or in terms of intent, these terms need not necessarily always be synonymous. For example, the term "employment equity" can be conceived as referring to an intent or an outcome while "affirmative action" can be thought of as the measures to be taken to achieve that intent or desired outcome. Likewise, "employment equity" can be considered as the justification for introducing legislated "affirmative action" in the workplace. But these normative issues are beyond the scope of this investigation.

Matters concerning the intended outcomes (or the lack thereof) of that legislation are beyond the scope of this investigation, as is addressing the normative dimension of the issue of workplace affirmative action. Also, social policy issues pertaining to child care, comparable worth, employment training, or pay equity, which are often associated with, related to, or conflated with employment equity,[4] are beyond the scope of this investigation and will not be dealt with here. Nor is it my intent to criticize or endorse the positions taken by both advocates and opponents of legislated workplace affirmative action, or to argue for or against the federal government's employment equity legislation itself, either in principle or in its application. Rather, my purpose is to give voice to the positions taken by the actors involved and to illustrate what this legislation can oblige employers to do, not on whether the legislation has achieved its intended purpose. I also leave it to others to defend or oppose both the concept of employment equity itself and its manifestation in Canada's Employment Equity Act.

Policy Change

Public policy change does not occur in a vacuum nor does it ordinarily take place overnight. Moreover, it is rarely caused by a single event or circumstance but rather by the convergence of a number of factors. In these respects, the case of the introduction of legislated workplace affirmative action in Canada is no different.[5] In this dissertation I explore and analyze the factors and influences acting on public policy decision makers for a third of a century from 1970 to the present which have resulted not only in the introduction of employment equity legislation in Canada but also in shaping and reshaping its essential characteristics. Two considerations dictated the choice of 1970 as a starting point. First, as Berlin reminds us, movements have obscure and imperceptible beginnings.[6] Thus, to attempt to identify all of the conditions that led to the establishment of employment equity legislation in Canada would be to deal with an infinite regression of causes and venture into a virtually impenetrable thicket of overlapping, intertwined and mingled factors which defy meaningful analysis. Second, 1970 marked the release of the report of the Royal Commission on the Status of Women in Canada,[7] which set out certain fundamental principles for the treatment of women in the workplace which later formed the basis for justifying the introduction of legislated workplace affirmative action in Canada.

The views advanced by the Bird Commission would not likely have captured the public's attention to the extent that they did nor would they have been adopted by governments had they been proposed in a previous era. That is primarily because of the emergence of a fundamental shift in attitudes and beliefs which occurred in most, if not all, Western democracies, including Canada, in the four decades preceding and following the release of its report in 1970. That shift, and its impact on the culture and mores of these societies has been explored in depth by Inglehart.[8] He notes, for instance, that a society's *weltanschauung* does not depend entirely on what people are taught but also reflects their own life experiences. He adds that at times the formative life experiences of a younger generation differ enormously from those of their predecessors and that this was the case following World War Two.[9] He argues that the creation of an unprecedented level of economic development in advanced industrial societies, the consequent rise in real per capita incomes, the emergence of the welfare state, the development of major scientific and technological advances, and changes in the international system all combined to produce gradual but significant changes in fundamental values with respect to politics, work, and the family in these societies.[10] He refers to this phenomenon as an "intergenerational value change"[11] from a materialist to a post-materialist ethos.

This shift in values from a materialist to a post-materialist ethos signalled a move away from positions generally concerned with material comfort to what Inglehart has referred to a "quality of life" issues, such as belonging and self-expression.[12] He attributes this rise of post-materialist values to the life experiences of the population cohort born following World War Two that he contends was reared under conditions of exceptional economic security,"[13] which he says accounted for a sense of personal security not found in earlier generations. This sense of security generated an increasing interest in politics, a willingness to challenge traditional elites and authority, the decline of religious influence, and changes in long-standing sexual and social conventions. This, in turn, resulted in the evolution of new models of social interaction–both political and economic.[14] This inter-generational value shift also witnessed a significant–but by no means total–support for increased state intervention and regulation of many aspects of social interaction.[15] Paradoxically, this value shift also created demands for "a more participatory role" by individuals and groups in political decision making.[16] The value change chronicled by Inglehart did not, however, replace the existing traditional social and economic norms. Rather, both continue to exist and to influence public policy choices in contradictory directions to this day.

As an advanced industialized nation, Canada was not immune to both the value changes and their effects found by Inglehart in similarly situated nations. Thus, in a study of popular values carried out in Canada as part of a larger World Values Survey, Nevitte concludes that there were indeed significant value changes in Canada during the 1980's and that these changes were strikingly similar to those "experienced by publics in other advanced industrial states."[17] Values are important, Nevitte argues, because they shape the economic, political, and social preferences of a society and inform its decisions about what is right and what is wrong in terms of public policy issues.[18] As was the case in other advanced industrial societies, this shift in values in Canada was due in large part to a prolonged and substantial period of rising affluence in Canada following World War Two.[19] In its train, this brought a massive upsurge in the level of education in the country, the expansion of welfare benefits that signalled the emergence of the so-called "welfare state," and a sharp rise in population mobility.[20] It also spawned a large number of pressure groups promoting women's issues, consumers' rights, environmentalism, and advocacy on behalf of what Nevitte terms as "historically marginalized groups,"[21] who, in addition to pressing for being included in the policy making process in Canada, sought to ameliorate their economic and security concerns. Nevitte also notes that, as in other similarly situated countries, this period of value change has resulted in a highly volatile period in Canadian history. This period was marked by an increasing public annoyance, if not irritation, with the status quo, including the role and influence of the nation's political elites, and the emergence of increasingly discordant relations amongst the nation's diverse communities.[22] Echoes and reflections of these concerns and issues appear in the detailed examination of the work of the Abella Commission later in this project.

Affirmative Action/Employment Equity

Out of the intellectual and social ferment spawned by the shift in social values described by Inglehart and Nevitte there emerged in Canada (and also elsewhere) a drive to persuade governments to enact affirmative action legislation on behalf of groups deemed to be, or to have been, victims of discrimination, including discrimination on the job. In the United States, the thrust for state directed workplace affirmative action arose out of the 1960's struggles for civil rights; in Canada, it grew out of the 1970's efforts of the women's movement for a greater involvement for women in the political and economic decision-making that affected their interests. Since the release of the report of the Abella Commission, workplace affirmative action measures have been labelled as "employment equity" in Canada, as opposed to the term "affirmative action" used in the United States. However, even in Canada the term affirmative action was in common use until the release of the Abella Report, which uses these terms interchangeably.[23]

As a proposition, the notion of employment equity possesses an intrinsic appeal in that it implies the presence of a workplace environment which ensures equitable treatment for everyone in the workplace: that is, a system where all workers have their rights and abilities respected in terms of hiring opportunities and where they are treated fairly once on the job. Unfortunately, this idea writ large provides no guidance for its application to the concrete realities of everyday workplace association. That is, it cannot inform decisions about who gets what job, why, and under what circumstances. Nor does it specify precisely who is to be promoted, using what criteria. The question then becomes one of defining employment equity and describing how it operates in practice. The literature on affirmative action/employment equity is voluminous.[24] While extensive, it is, however, somewhat limited in the scope of issues considered. First, most of the topics deal with either the moral justification for its introduction or with arguments that its implementation is an assault on the liberty of individuals. For example, the entire twenty-two articles in Cahn's work[25] (both for and against affirmative action) deal with the issue exclusively from ethical or moral perspectives, as does Rosenfeld's book-length treatise on the subject.[26] For Rosenfeld, the issue of affirmative action is a moral question grounded in the related notions of equality and of distributive, compensatory, and procedural justice.[27] For her part, Thomson invokes the notion of justice to support her advocacy for the implementation of workplace affirmative action with the contention that women and blacks are the object of discrimination.[28] The related notions of discrimination, equality, and justice are all clearly moral issues. Second, another important element of the literature considers the constitutional or legal issues involved with affirmative action.[29] Third, other commentators investigate whether affirmative action measures achieve their declared objectives.[30] Fourth, still others attempt to link workplace affirmative action to economic considerations.[31] Lastly, there is a limited literature devoted to the practical implementation of workplace affirmative action.[32] Generally speaking, those who support workplace affirmative action measures also support direct state involvement in the process through legislation and regulation.

Fundamental to the moral justification of workplace affirmative action was (and is) the notion of equality, variously interpreted. However, as Aristotle observed long ago, while all can agree on the worth of equality in the conduct of human affairs, it is in defining what it is and who is to benefit from it that disagreement and contention emerge.[33] In the events leading up to the enactment of the Employment Equity Act, the notion of equality was (and indeed still is) interpreted in a variety of ways as this applies to conditions in the workplace. Generally speaking, though, the issue is framed in terms of equality of opportunity or equality of result. Often, these terms are used interchangeably without taking into account the particular characteristics of each. Or the first is utilized by advocates of affirmative action to signify a positive social good while the second is used by opponents of such measures to imply either an injustice[34] or the imposition of an economically inefficient or administratively ineffective program.[35]

It is not my intention to deal here with issues of moral justification for the implementation of affirmative action in the workplace. Nor do I wish to consider the constitutional or legal problems associated with its enactment into law. Nor am I concerned with whether employment equity programs actually achieve their declared results or with whether or not they assist or hinder economic development and growth, nor am I interested in the issues and problems associated with their promotion in the workplace. These matters are already extensively dealt with in the literature. Rather, my intention here is to examine the employment equity issue in Canada from the almost neglected perspective of policy development[36] in terms of the influence of royal commissions on that process, and particularly the role of the Abella Commission, not only in the introduction of legislated workplace affirmative action in Canada but also in the shaping and reshaping of its essential characteristics. In keeping with the decision to avoid normative considerations, my analysis of the provisions of the Employment Equity Act will focus on what it actually requires employers to do.

Ideas, Interests, and Institutions

In examining the development and implementation of employment equity legislation in Canada, I will argue that the answers to these questions rest in the interaction of ideas, interests and institutions. Terms such as ideas, interests, and institutions are invariably open to a variety of interpretations. Hence, they require definition in order to serve as reliable analytical resources. Following Heclo,[37] the term "ideas" as used here means the mental constructs used by individuals, groups, and even whole nations to make sense of, and function in, their environment. Ideas are also sometimes labelled as beliefs, values,[38] normative visions,[39] ideologies,[40] or even social learning.[41] They come in a variety of forms and emerge from a number of sources. Ideas may also be formally enshrined in a nation's constitution and thus help define the boundaries of policy innovation, as Canada's experience with the Charter of Rights and Freedoms illustrates.[42] In addition, ideas are, to a large extent grounded in the history and mores of a people. As Kelman has noted, "An individual's beliefs about what constitutes good public policy will often be influenced by his upbringing, social class, and religious, ethnic or regional identity."[43] Still other ideas emerge from the minds of reformers bent on changing some aspect of their societies, very often as a result of a crisis of some kind.[44] Ideas also originate with groups, such as those directly involved in the political arena like political parties; with pressure groups, with bodies such as universities and think tanks; or, in the case of policy ideas, royal commissions, Parliamentary committees, or administrative task forces.[45] Ideas are also attached to topics. For instance, there are economic ideas, religious ideas, political ideas, and policy ideas, to name just a few, all of which serve to guide action or to allow individuals–singly or in groups–to function in their social environment. But whatever their origin, ideas always provide the fundamental assumptions governments use to define problems or limit the range of policy alternatives available to them.[46] With respect to the issues to be examined here, the value shifts in Canada and other advanced industrial countries can be considered as examples of changing ideas.

Second, the term "interests" refers here to all the organizations engaged in the self-interested and purposive pursuit of advantage which participated in the work of the Abella Commission. More specifically, the term "pressure group" is applied to those groups and organizations, based on the premise that they sought to influence public policy in ways that would benefit their members. Third, the term "institutions" applies here to not only stable, long-term social organizations, including the state and its agencies, but also to the formal and informal rules and norms that govern social action in society.[47] Institutions, Heclo tells us, assist individuals (or groups) to signal their preferences, to privilege or limit options, to bequeath meaning to certain practices, and to change ideas about interests and preferences.[48] In other words, institutions not only channel the efforts of pressure group interests in particular directions but also affect the manner in which social actors think about issues or their beliefs about what constitutes appropriate avenues for change.[49]

However, even if one were to accept uncritically the notion that policy emerges solely from the interaction of ideas, interests, and institutions, the fact remains that both interests and society's institutions (but not its mores and laws) are made up of individuals. I recognize that some of these individuals are in positions of power or influence and that their individual pedilections do indeed shape policy outcomes. Thus, the leaders of the National Action Committee on the Status of Women (amongst others) who successfully lobbied the federal government to introduce legislated workplace affirmative action, and who not only met directly with Justice Abella but also submitted a brief to her commission, were no doubt influential in shaping the final legislation, even though it may not have accommodated all of their demands. Also, Lloyd Axworthy, as an influential member of Cabinet, was responsible for setting the process of legislating employment equity in motion. Moreover, in selecting Justice Abella as sole commissioner and in creating her terms of reference, he was responsible for channelling the work of that commission in a particular direction. Axworthy's selection of Justice Abella is a good example of Courtney's observation that a government normally selects as commissioners persons whose views are consistent with its own and whose reports and recommendations are apt to reflect this.[50] In the vast majority of cases, powerful individuals exert their influence on public policy through institutions. Thus, a member of the premier political institution in the nation (Parliament) promoting an idea supported by an array of influential interests is in a position to channel the development of public policy in a particular direction. Likewise, a person accorded the status of a royal commissioner secures an influential platform for promoting his or her ideas. As will be seen in a later chapter, Justice Abella did indeed influence the course of events in a particular direction. Thus, while both Abella and Axworthy personally influenced the course of events in this case, both did so as an integral part of an institution. The same can be said of the influential senior mandarins who channelled the research and conclusions of the Rowell-Sirois Commission into channels of their choosing.[51] In each of these cases, influential individuals were so by reason of their positions in an important institution and used those positions to direct policy development in particular directions.

As indicated earlier, the formal and informal rules which a society employs to regulate its affairs also constitute part of its institutions. Since 1982, the most important new political institution in Canada is arguably the Charter of Rights and Freedoms enshrined in the nation's constitution.[52] As a lawyer and a jurist, Justice Abella understood full well the importance of the Charter as a means to promote the interests of the designated groups identified in her terms of reference and commissioned seven separate studies to assess the possible use of the Charter to support the introduction of legislated workplace affirmative action. Moreover, in her report, she takes up several pages to demonstrate how the Charter provides solid constitutional support for enacting affirmative action legislation on behalf of those designated groups.[53] Curiously, however, Justice Abella did not mention the Charter at all in either of her calls for input into the work of her commission. That may be the reason that reference to the Charter was missing from virtually all of the briefs submitted to that commission, (the only reference to it came from a couple of briefs submitted by women's organizations) although many briefs made reference to the Canadian Human Right Act, another institutional rule of conduct in force at the time. While the Charter may well have escaped the attention of those representing designated groups, it featured prominently in Justice Abella's own perspective on the feasability of introducing legislated employment equity in Canada.

Royal Commissions

Although public policy ideas emerge out of the broad matrix of values particular to a given time and place, in order to become incorporated into the governance institutions of a nation such ideas must be given a vindicative form as well as an administrative substance. This can happen in a variety of ways. Governments can (and sometimes do) adopt fully developed policy proposals crafted by a group or groups. In other cases, governments wish to develop such policy ideas themselves and rather than call on their bureaucracies for advice often turn the task over to royal commissions. Royal commissions, Bashevkin tells us, "have become fixtures of Canadian political life."[54] The validity of this statement is attested to by the fact that virtually every federal government administration since Confederation has turned to royal commissions for advice at one time or another. This suggests that governments have, on the whole, found them useful. The reasons for this no doubt vary with time and circumstance. In Canada, royal commissions have served a variety of purposes over the years. Some have been tasked with the responsibility of determining the cause of a disaster, such as the collapse of the Ocean Ranger drilling platform in the North Atlantic off Newfoundland. Others have been asked to assign responsibility for malfeasance or dereliction of duty. Still others have been given the responsibility for developing public policy models and implementation plans to deal with major national economic or social problems, while others have been mandated to recommend ways for governments to implement already decided upon policy courses. Each of these responsibilities has called for sometimes significantly different approaches.

Doern notes that governments create royal commissions for any or all of the following reasons. First, they provide governments with information upon which to initiate legislated policy. Second, they can, and often do, generate public pressure for some intended legislative course of action, as in the case of the Abella Commission. Third, they are useful for sampling public opinion on some issue. Fourth, they are a convenient device for investigating state agencies and bodies of any kind. Fifth, they allow for the voicing of dissent on issues of public concern. Sixth, they allow governments to postpone action on potentially embarrassing issues.[55] Similarly, royal commissions are said to be created to focus public opinion on issues or problems, to[56] generate consensus in favour of particular policy initiatives and thus legitimize them in the public mind,[57] as a source of policy information,[58] as means of reappraising public policies which are no longer universally agreed upon,[59] as a way of correcting the "misconceptions of conventional wisdom;"[60] as mechanisms for "exhortations and symbolic politics,[61] or, on a somewhat more abstract level, to bring "knowledge to the service of public power,"[62] and the "intellectual task of education and policy clarification."[63]

In other words, royal commissions are an accepted way by which deficiencies in the political system to deal with crises can be addressed.[64] In the United States, such enquiries are often carried on by what have been termed "blue ribbon panels," or, in cases of alleged malfeasance, special prosecutors.[65] In Canada, royal commissions were established prior to the 1840 Act of Union[66] and the first post-Confederation royal commission was established in 1870 to investigate matters relating to inland navigation in Canada.[67] Canadian royal commissions, however, differ from their British counterparts in two respects. First, in Britain, royal commissions are, in Hodgetts' words, entirely the creations of the executive, that is, the Cabinet. In Canada, on the other hand, such commissions are created under the provisions of the Public Enquiries Act.[68] This means that in this country royal commissions are, technically at least, creatures of Parliament, not solely of the Cabinet. That Act also confers powers on Canadian government royal commissions not necessarily always accorded their counterparts in Britain, such as the power of subpoena and the authority to hear witnesses under oath, without at the same time limiting in any way the discretion of the Canadian Cabinet to establish them for any purpose whatsoever.[69] Second, while in Britain the membership of royal commissions has traditionally been large so as to ensure representation of all groups affected by the issue under consideration on the commissions themselves, the Canadian government does not appear to have felt the need to diversify the membership of its royal commissions in this manner[70] and has tended instead to rely heavily on much smaller commissions composed of members of the judiciary or persons possessing expertise pertinent to matters before them.[71] Often, as in the case of the Abella Commission, there is only one commissioner. With respect to the size of federally-appointed commissions of enquiry during the period from 1940 to 1985 which dealt primarily with social issues of one kind or another, a representative sample indicates that the average membership on such commissions was roughly 5.5.[72]

From Confederation to 1967, the Canadian government created 352 royal commissions, with 44 of these established following World War Two.[73] This proliferation indicates that royal commissions have assumed an important role in Canada's governance and policy formulation system. In the first decade after Confederation, royal commissions were established by the federal government to enquire into transportation problems or to look into certain corruption practices of parliamentarians or public servants.[74] Somewhat later commissions dealt with issues concerning labour or race relations, immigration, natural resources, agricultural problems, radio broadcasting, industry and banking practices, espionage, and natural disasters, amongst many others.[75] While early royal commissions rarely dealt with what might be termed social issues, beginning in the 1930's the federal government has created a number of royal commissions with wide-ranging and extensive mandates to examine a wide spectrum of economic and social issues,[76] amongst them, the Rowell-Sirois Commission on Dominion-provincial relations, the Massey Commission on the arts, letters, and science, the Gordon Commission on Canada's economic prospects, the two Hall Commissions on health care, the Carter Commission on taxation in Canada, the Commission on Bilingualism and Biculturalism, and the MacDonald Commission on the Economic Union and Developmental Prospects for Canada. That shift in emphasis, Courtney reminds us, changed the nature of royal commissions from one of dealing with topics or issues of local or regional interest, which was the focus of the early commissions, to one of advising the government on the formulation of policies concerning pan-Canadian interests as well as serving as a vehicle for the voice of various pressure groups to be heard in the conduct of the nation's affairs.[77] Aside from those created to enquire into natural disasters or political scandals, royal commissions in Canada have generally been established in times of uncertainty or when governments are pressed to act by a vigilant opposition[78] or by the economic, political, or social pressures of the day.[79]

An integral element of the royal commission process centres around the selection of the commissioner or commissioners appointed to serve on these commissions. In the nation's early days, commissioners were generally chosen from the legal profession, and particularly from the judiciary: "from bar and bench" in Professor Hodgett's evocative terminology.[80] This is due, in part at least, to the fact that these early commissions were established to investigate specific particular issues of local interest, such as transportation problems, or government scandal of one kind or another:[81] that is, where there was a need for commissioners trained and experienced in the sifting of often conflicting evidence, which is the special province of the legal profession.[82] A relatively recent example of this kind of royal commission is the Hickman Royal Commission on the Ocean Ranger Marine Disaster. In this case, three of the six commissioners were senior judges. In addition, where pan-national issues are involved , there is a tendency to ensure that the main regions of the country are represented on federal royal commissions.[83]

But judicial experience, legal training, or regional representation are not the only criteria governments use in choosing the members of royal commissions. For example, no government is likely to appoint to a royal commission any individual whose position on an issue is at complete cross-purposes to those of the government. Rather, governments look for an individual, or persons, with views which correspond with their own, or at least are not in conflict with them.[84] It was partly because Lloyd Axworthy, then Minister of Employment and Immigration, wanted someone with ties to the feminist and human rights movements as commissioner that he selected Justice Abella for the enquiry into employment equity.[85] Similar considerations may well have motivated the choice of Roy Romanow to chair the latest federal royal commission on health care. This means that in creating a royal commission the government can anticipate the general nature of the findings and recommendations of that commission's final report, although it is unlikely to be able to predict precisely the nature and extent of those recommendations.[86]

Despite the varied topics and issues they are tasked with, royal commissions in Canada are of essentially two kinds: those created to establish facts, and those set up to determine the manner in which best to achieve some course of action, a dichotomy that Christie and Pross have characterized as investigatory and policy advisory commissions,[87] even though every royal commission inevitably does some of both. As well, the topics given to royal commissions for investigation are of two kinds: those established to enquire into a particular event or circumstance, and those created to investigate recurring cultural, economic, or social issues. Examples of royal commissions set up to enquire into a particular event are the Hickman Commission, which investigated and reported on the Ocean Ranger Marine Disaster of the early 1980's, and the earlier Spence Commission, which enquired into a federal cabinet minister's affair with Gerda Munsinger. Health care is an example of a recurring issue handed to royal commissions to examine and recommend on. It has been the subject of three royal commissions at the federal level: two chaired by Mr. Justice Emmett Hall and the one conducted by Roy Romanow, the former premier of Saskatchewan. For his part, MacKay categorizes commissions of enquiry as of three kinds: those established to assist in the determination of public policy, those set up to determine guilt or innocence in specific cases, and those created to review what MacKay terms as "political judgment.[88] MacKay, citing Salter and Slaco, also notes that commissions of enquiry can be classified as either research or arbitration exercises, but this refers primarily to those concerned with scientific matters. As the name implies, a research-oriented commission focuses on what is not known while an arbitration commission forces closure on issues. He adds that very often, commissions of enquiry adopt both methods at different stages in their work.[89]

Despite the evident preference of many elected officials to use royal commissions as a way of developing new policy ideas in the face of seemingly intractable problems, their use is not without its critics. As Courtney (otherwise a supporter of royal commissions as a useful institution) has noted, critics of royal commissions tend to argue that their primary purpose is to relieve or absolve governments of some controversial issue, that governments are under no obligation to implement their recommendations and often do not do so, that they are not impartial and tend to favour governments' position on the issues they are asked to investigate,[90] or that they are virtually always given insufficient time to do their work.[91] It is also argued that royal commissions are inherently incapable of producing recommendations which are both understandable and useful to elected officials, bureaucracies, and the public at the same time.[92] It has also been suggested that the government's own experts, the bureaucracy, are better equipped to provide the information and recommendations governments require, since they are more knowledgeable about administrative norms and procedures than any commission member can be, even though it is acknowledged that this would leave the process open to the protection and promotion of vested bureaucratic interests.[93] The idea that royal commissions threaten individual rights in certain circumstances has also been advanced.[94] All this may suggest that royal commissions may be called on to undertake tasks which are arguably the responsibility of Parliament. If so, however, it is a responsibility that many governments have deliberately assigned to them over many years.

On the other hand, royal commission supporters argue that they provide a degree of detachment and independence from government (both elected and appointed officials) and objectivity with respect to issues to a degree not possible with other bodies, such as Parliamentary committees or civil service task forces.[95] In addition, royal commissions are said to provide a means for citizens (or, more generally, groups) to make their views known and have them considered prior to the implementation of any public policy[96] and thus make available alternative sources of information about policy problems to governments other than what can be given to governments by their bureaucracies.[97] Supporters also note that royal commissions are generally free of party partisanship and are unencumbered by the secrecy considerations of administrative officials.[98]

Royal commissions are an important and permanent institution of governance embedded in law and tradition in Canada and have been used extensively by the federal government since Confederation. Royal commissions have, over the years, examined a very broad range of economic and social issues under a variety of circumstances. Their voluminous reports and archives are a rich source of material on a wide spectrum of issues covering more than a century of political life and policy changes in Canada.[99] This means that reliable comparisons and contrasts are possible with respect to circumstances generating their creation; the economic, political, and social environment in which they function; and their impact on public policy. Primarily, however, the value of the study of the work of royal commissions as a way of understanding the dynamics involved in the development of public policy in Canada lies in the fact that this particular governance institution has been the well-spring of major policy changes in this country. For example, the National Employment Commission, established in the midst of the Great Depression, resulted in the creation of a national unemployment insurance scheme, albeit belatedly. Likewise, the work of the Rowell-Sirois Commission promoted the abandonment of the country's traditional views about the proper role of government in the management of the national economy and its replacement with a Keynesian-inspired interventionist model. So too, the first Hall Commission on health care was followed by the introduction of Canada's medicare system. And in the same fashion, the

MacDonald Commission's recommendations resulted in the Canadian government decision to abandon a long-held principle and enter into a free trade agreement with the United States. Each of these cases represented a clear shift in Canada's basic public policy. The same can be said of the work of the Abella Commission. It too resulted in a profound shift in Canadian public policy.

Despite the many occasions upon which royal commissions have been called upon for advice by the Canadian government, commentary on their existence, work, and impact upon public policy is sparse in the literature in comparison with the attention accorded to Parliament, political parties, pressure groups, or the public service.[100] And what is available tends to deal with what motivates governments to create them, along with their composition, their roles, their usefulness, or their cost. As an example, with respect to the motivations of government, royal commissions are said to be created to focus public opinion on issues or problems,[101] to generate consensus in favour of particular policy initiatives and thus legitimize them in the public mind,[102] as a source of policy information,[103] as a means of reappraising public policies which are no longer universally agreed upon,[104] as a way of correcting the "misconceptions of conventional wisdom,"[105] as mechanisms for "exhortations and symbolic politics,[106] or, on a somewhat more abstract level, to bring "knowledge to the service of public power,"[107] and to promote the "intellectual task of education and policy clarification."[108]

Finally, in later chapters the mandate of the Abella Commission will be compared and contrasted to those of the Rowell-Sirois, Gordon, and MacDonald royal commissions, which were created to advise governments on how to deal with the serious economic problems of their respective eras. By contrast, the objective set for the Abella Commission by the government was to devise ways by which the state could promote employment opportunities for, to eliminate workplace discrimination against, and to assist designated group members to compete on an equal basis in the nation's labour markets.[109] These are not economic objectives but rather social ones aimed at rectifying perceived injustices by redistributing employment benefits in a more equal manner. That being said, this is not to argue that these "social' objectives cannot have economic consequences for both employers and employees. Nor is it to suggest that the "economic" objectives of the Rowell-Sirois, Gordon, and MacDonald Royal Commissions had no impact on the introduction of social policy in Canada. Indeed, the Rowell-Sirois Commission's recommendations, for example, formed the basis for the creation of the welfare state in Canada, which generated major social changes for the nation. Rather, the distinction made here serves to emphasize the intentions of the governments which created each of them. It is acknowledged that the adoption of the recommendations of a "social" commission such as the Abella Commission can have economic consequences but that should not serve to obscure the intentions of the government which created it.

Bradford's Thesis

Thus, aside from a few references to the effect of the work of royal commissions on public policy in discussions of other aspects of their work,[110] little has been written about the importance of royal commissions in affecting change in public policy. An important exception to this is Bradford's examination of the role and impact of three major royal commissions on the development and implementation of economic policy in Canada. Following Heclo, Bradford's thesis is that the development and implementation of policy is best understood as the result of the interaction amongst ideas, interests, and institutions.[111] By this he means that policy change results from the interaction amongst ideas generated from what he terms "social learning networks," interests (politicians, bureaucrats, and pressure groups), and institutions–the formal structures created to make and implement political decisions as well as the often informal societal understandings about how things ought to be done.[112] Bradford contends that this interaction amongst ideas, interests, and institutions does not operate in a random fashion but works in specific ways. That is, that ideas motivate interests which act on institutions, which in turn channel both ideas and interests in certain directions.[113] What Heclo argues (and Bradford utilizes in his examination of three royal commissions) is that it is the reciprocal interrelationship of ideas, interests, and institutions that is critical to the understanding of how policy change occurs, as opposed to determining the primacy of any of these factors.[114] While it is no doubt true that each of these factors may well exert a greater influence in a specific case or at a given point in time in that case, it remains that each factor brings to bear its particular impact on any matter under consideration. As will be demonstrated later, in the case of the introduction of workplace affirmative action legislation in Canada the significant influence exerted by each of Heclo's factors varied with time. Thus, initially, it was those ideas first articulated by the Bird Commission[115] which exercised the greatest influence. Later, those ideas were adopted by interest groups which adapted them to their particular purposes and directed the course of its development by pressuring governments to act. Later still, state institutions transformed the intentions of those pressure groups into an essentially new public policy direction: legislated workplace affirmative action. However, these state institutions were not all of one mind. At the level of elected officials, while Lloyd Axworthy, the minister who proposed the creation of the Abella Commission, had the support of some of his Cabinet colleagues, others opposed the introduction of legislated employment equity in Canada. Moreover, while the senior mandarins in Axworthy's own department of Employment and Immigration heavily influenced his decision to proceed with the project, their counterparts in the Department of Finance, the Treasury Board, and the Privy Council Office resolutely opposed it.[116]

Royal Commissions as Agents of Change

To illustrate this interaction process Bradford examines the work of three royal commissions created to provide the federal government with policy ideas in the face of serious economic and social issues confronting the country. These were the Royal Commission on Dominion Provincial Relations, better known as the Rowell-Sirois Commission; the Royal Commission on the Economic Union and Development Prospects for Canada, commonly referred to as the MacDonald Commission; and the Royal Commission on Canada's Economic Prospects, known generally as the Gordon Commission. Bradford demonstrates how and why the first two of these royal commissions mentioned here had a major impact on Canadian economic policy and why the third did not.

For Bradford, the measure of success for a royal commission is the degree to which its recommendations result in changes to public policy by becoming embedded in the legislation, administrative institutions, and to some extent, the mores of society: in other words, the degree to which its philosophy and implementation recommendations are translated into laws and administrative agencies are created and funded to implement them. That standard will be applied here to the examination of the work of the Abella Commission. Specifically, it will explore the degree to which the experience of the Abella Commission can provide a satisfactory explanation for the policy changes which flowed from its recommendations and in what way this reflects Bradford's conclusions about the success or failure of the royal commissions he has examined in terms of their ability to produce policy change.

The Rowell-Sirois Commission

The world depression of the 1930's created serious economic and social problems in Canada. The government's initial response was to turn to the essentially orthodox and familiar notions of "sound finance and responsible government...."[117] It was to correct what they perceived as this kind of policy inertia that a group of individuals that Bradford has labelled as "policy intellectuals" began to introduce new ideas about the nature of the Canadian economy and the role of the state in relation to it and began to disseminate them beyond the universities in order to influence political leaders, senior administrators, and the heads of business and labour groups.[118] In general, they believed that their technical expertise in policy matters would not only result in an increase in economic efficiency but would also "help stabilize the incomes of individuals in the volatile staples economy"[119] of Canada at that time. They also believed that the economic and social problems generated by the depression required policy initiatives that could only be sustained by the federal government.[120] By the mid-1930's the need for new economic ideas and policy implementation strategies had been accepted by senior officials in both the federal Department of Finance and the Bank of Canada.[121] The appointment of W.C. Clark as Deputy Minister of Finance in 1932 gave the policy intellectuals a direct and influential access to highest levels of political and administrative institutions in the country. Men like Clark himself, Alex Skelton, Graham Towers, and W.A.

MacIntosh, amongst others, now assumed extremely influential roles in the nation's economic policy deliberations.[122] They were thus in position to not only promote their ideas but also as part of the institutions of the nation to oversee their implementation once these were approved by the government of the day.

Thus, the 1930's initiative for changing the federal government's economic policies and constitutional regime in order to deal with the problems generated by the Great Depression can be seen to have originated with a small cadre of federal government "techno-bureaucrats"[123] and their "policy intellectual" allies. According to Bradford, this occurred in the face of either indifference to new ideas or opposition to change on the part of elected officials.[124] These bureaucrats sought to insulate the government's economic policy-making from what they saw as the inefficiencies inherent in constitutional federalism, the adverse effects of conflicting interests, and the divisive results of partisan politics by ensuring that policy decisions were based on solid economic considerations rather than calculations of political interest. In Bradford's words, they sought to protect "policy from politics."[125]

Faced with the lack of what they viewed as viable initiatives by elected officials, this group of senior bureaucrats advanced the establishment of a royal commission in order to promote the economic and constitutional changes they believed necessary to deal with the nation's problems. They believed that such a commission could not only generate new policy ideas but at the same time inform the public about the need for change and mobilize support for this from important interests, and in so doing persuade elected officials to abandon their orthodox economic doctrines and the policies that flowed from them.[126] By 1937, they had persuaded the government to create the Royal Commission on Dominion-Provincial Relations, better known as the Rowell-Sirois Commission, and later actively supported its work and recommendations, and still later, oversaw the embedding of many of those recommendations such as unemployment insurance and family allowances into Canada's political and administrative institutions.[127]

The ideas promoted by these policy intellectuals were grounded to a significant extent on the theoretical work of W.A. MacIntosh,[128] which integrated the Keynesian concept of domestic demand management with the staples thesis.[129] This presupposed an important role for the state in fostering economic development and providing for stabilization measures[130] which relied heavily on state intervention in the economy where this was guided by "expert intelligence"[131] and included such measures as stimulative spending to encourage production, the setting up a national unemployment scheme and of a centralized relief program to mitigate the adverse effects of the depression.[132]

Although politicians authorized the creation of the Rowell-Sirois Commission, policy intellectuals inside the bureaucracy were instrumental in setting its terms of reference and recruiting the researchers who provided the intellectual groundwork for its deliberations. These appointed officials espoused more expansive views about the scope and nature of the commission's mandate than did the politicians who authorized its creation[133] and they ensured that the process remained substantially under their influence by placing one of their own as the Commission's secretary and research director.[134] In that capacity, he was in a position to influence the kinds of research undertaken on behalf of the Commission and thus affect its conclusions and recommendations.[135] Because the public hearings held by the Rowell-Sirois Commission failed to produce viable new policy ideas,[136] the commissioners relied heavily on the work of their researchers when they came to produce their report.[137] The researchers, under the direction of the policy intellectual Alex Skelton, formulated new policy ideas and implementation strategies designed to give the federal government control over national economic and social policies, along with the resources to do so.

The Rowell-Sirois Commission's report was tabled in Parliament in May, 1940. Essentially, it called for what Bradford has labelled as an 'integrated, seamless' plan intended to be implemented as a package and set out the terms for "social bargaining around integrated institutional reforms and policy innovations."[138] Its recommendations were cautiously received by the government. While the Prime Minister privately praised the report's recommendations as measures needed to build a better nation, he did not move to implement them, partially, at least, because by then Canada was heavily engaged in World War Two.[139] Despite the rather cautious approach to change favoured by the Prime Minister and Cabinet, senior federal bureaucrats quickly adopted some of the Rowell-Sirois Commission's recommendations as the basis for creating new methods for organizing the production and procurement of war material and the financing of this activity, all the while containing inflation, public debt, and consumer demand in a period of vigorous economic activity.[140] This experience was later successfully applied to the problems associated with the transition to a peace-time economy and to those of the immediate post-war period and served to solidify the leadership of these policy intellectuals in both the bureaucracy and in academia in the development and implementation of public policy.[141] It was this continued influence over the next decade and a half that ensured that the notions first articulated by the Rowell-Sirois Commission became embedded in the governing institutions of the Canadian state and in the minds and hearts of Canadians.

The MacDonald Commission

Like the Rowell-Sirois Commission before it, the MacDonald Commission was, in Bradford's terms, successful in that its public philosophy and implementation ideas became embedded in the public policy of the nation. As in the case of the Rowell-Sirois Commission, the motivation for the government's decision to create the MacDonald Commission was the continuing unsatisfactory performance of the Canadian economy and its associated social problems, which by the late 1970's and early 1980's was plagued with a combination of stagflation, declining productivity, and a growing public debt, along with the social consequences of persistent high unemployment and a rise in poverty.[142] That Commission was established in November, 1982 and was given the mandate to develop new objectives and policies for economic development as well as ideas for forging a new consensus in the country with respect to implementing these objectives and policies.[143] In both the scope of its research program and the extent of its consultation process the activity of the MacDonald Commission was unprecedented.[144] In its research, the MacDonald Commission organized its efforts into three broad areas: economics, politics, and legal and constitutional matters. The consultation process undertaken by the Commission was the most extensive undertaken by a royal commission up to that time.[145] Given the policy discourse dichotomy legacy generated by the Gordon Commission, (to be examined later in this chapter) the MacDonald Commission's consultation process became the arena for the promotion of the diverging views of the proponents of "liberal-continentalist" model on the one hand and those of the supporters of an "interventionist-nationalist" approach on the other.[146] The MacDonald Commission's proposals were applauded by business interests such as the Canadian Alliance for Jobs and Opportunity. On the other hand, interventionist-nationalist pressure groups such as the Pro-Canada Network, sharply criticized them on the basis that they put the country's culture, living standards, and sovereignty at risk.[147]

Like the Rowell-Sirois report some forty-five years earlier, but unlike the work of the Gordon Commission which preceded it in the 1950's, the Macdonald Commission's report presented an integrated approach which combined a coherent public philosophy with supporting implementation ideas.[148] Moreover, on the political level, the Commission's philosophy and many of its implementation ideas were accepted and promoted by both the Mulroney and Chrétien administrations,[149] something the Diefenbaker, Pearson, and Trudeau governments failed to do as consistently in the case of the Gordon Commission's recommendations. Also, the MacDonald Commission's policy proposals gained the support of the leading federal agencies concerned with economic issues, notably the Departments of Finance and Industry, as well as the Bank of Canada,[150] support which was denied or only grudgingly given the Gordon Commission recommendations. Finally, the thrust of that Commission's proposals were supported by both influential business interests and some provincial premiers, although they were opposed by some social interest groups.[151]

Despite the participation by proponents of both the liberal-continentalist and interventionist-nationalist policy models in its consultation process, the MacDonald Commission did what the Gordon Commission and a succession of federal governments had failed to do: develop a coherent public policy model featuring both a new public philosophy and feasible implementation proposals consistent with that philosophy.[152] Its public philosophy was grounded on the principle of the "allocative superiority of markets over politics" and the belief that state intervention in the economy was impractical in a Canadian context. It called for market liberalization and the limitation of the state's stabilization and redistributive functions.[153] In terms of its implementation proposals, it recommended, amongst other things, that the Canadian government conclude a free trade agreement with the United States and integrate its labour market and social assistance policies.[154]

In 1985, the Mulroney government adopted the essential elements of the MacDonald's Commission's public policy recommendations, including its proposal for a free trade agreement with the United States as well as its call for the restructuring of social programs.[155] The Liberal government which came into power in 1993 followed in the policy footsteps of its Progressive Conservative predecessor and continued the restructuring of the government's policies in line with the recommendations of the MacDonald Commission, including a major thrust aimed at deficit elimination and reductions in social spending.[156] The roughly two decade period of sustained political support for the philosophy and implementation ideas found in the MacDonald Commission's recommendations has ensured that this philosophy and its associated program ideas have to a large extent become embedded in the governance institutions of the country. The Free Trade Agreement with the United States and its successor, the North American Free Trade Agreement, are in place, as are other economic and social policies, such as the restructuring of the Unemployment Insurance program.

The Gordon Commission

In contrast to the policy changes flowing from the work of the Rowell-Sirois and MacDonald Commissions, Bradford demonstrates that the work and recommendations of the Gordon Report resulted in a much more limited level of change in public policy in Canada, largely because its public philosophy lacked the coherence found in the other two. However, in terms of the motivation of the government in establishing it, the stimulus for the establishment of the Gordon Commission (its proper name was the Royal Commission on Canada's Economic Prospects) in 1955 was brought about by the inability of the political system at that time to generate fundamentally new policy directions in the face of a growing set of serious economic problems.[157] These included the effects of the 1953-54 economic downturn in Canada, a growing concern in the country about the level of foreign investment in the key manufacturing and resource sectors, the increasing outflow of dividend payments to foreign investors, and the low level of domestic research and development activity, amongst others.[158] On the other hand, unlike the case of the Rowell-Sirois Commission, the impetus for the creation of the Gordon Commission came not from the bureaucracy and its policy intellectual allies but rather from political parties and elected officials unsatisfied with the results of application of the kind of "technocratic-Keynesianism"[159] economic measures promoted by the Rowell-Sirois Commission.[160]

Like the Rowell-Sirois and Macdonald commissions, the Gordon Commission was given the task of generating broad economic policy advice, including issues of long-term economic growth and development.[161] Also, as in the case of Rowell-Sirois Commission, the input it received in public hearings from business, labour, and social interests was of marginal influence because of the unclear or contradictory positions they advanced.[162] That meant that the Commissioners relied heavily on the work of their research team, although it also involved both business and labour groups in some of its research activities.[163]

While the Rowell-Sirois and MacDonald Commission reports presented coherent, integrated, and broad-ranging approaches to dealing with the Canadian economy, the report prepared by the Gordon Commission featured a more modest and less coherent vision of how the Canadian economy was to be managed and its implementation recommendations proved to be less well integrated with its philosophy than was the case with the reports of the Rowell-Sirois and MacDonald Commissions.[164] But perhaps most importantly, the Gordon Commission report incorporated two fundamentally differing views of the role of the state in the management of the Canadian economy and two incompatible visions about the direction

Canada's economic policies should take, a condition that Bradford has termed as two "policy discourses."[165] This was the result of a compromise between Walter Gordon's goal of developing new ideas as to how the Canadian economy was to be managed and introducing them into the nation's governing institutions, as opposed to that of the Commission's researchers, who preferred to reaffirm and refurbish the existing technocratic-Keynesian model.[166] This second vision was essentially a modified version of the existing techno-bureaucratic Keynesian model and was continentalist in orientation and is labelled by Bradford as "liberal-continentalist."[167] It was largely derived from the tenets and practices associated with the existing Keynesian orthodoxy, was promoted and supported by the leadership of important elements of the federal bureaucracy and their academic allies, and sought no more than to retain improved versions of existing practices.[168] On the other hand, Walter Gordon's goal of enhancing the federal government's intervention in the economy was grounded in his concern about the loss of the country's economic independence which he saw as inherent in a reliance on a continentalist model. This view is designated as "interventionist-nationalist" by Bradford.[169] This discourse called for the creation of a greater federal government capacity to deal effectively with the national economy's continental and regional imbalances and went far beyond the kind of macroeconomic fine-tuning advocated by the Keynesian-inspired liberal-continentalist discourse in order to foster and protect the country's economic independence in that it envisioned using established policy instruments differently as well as creating new ones.[170] Its primary concerns centred on questions of national economic control and ownership, distribution of investment, and the innovative potential of the Canadian economy: issues of little interest to supporters of the liberal-continentalist discourse.[171]

In some respects, the political reaction to the Gordon Commission's recommendations reflected the response given those of the Rowell-Sirois Commission by an earlier generation of elected officials: a tentative and cautious one. For example, the St. Laurent administration showed little interest in the Gordon Commission proposals.[172] And while the Diefenbaker government which succeeded it did introduce some of its recommendations, it failed to adequately establish and support the administrative measures that would have ensured their effective implementation.[173] This was partly due to a marked difference of opinion in cabinet between those who advocated Gordon Commission-inspired state interventionist policies and the supporters of a conservative form of technocratic Keynesianism about the appropriateness of these policy initiatives.[174] Moreover, the federal bureaucracy and its policy intellectual allies remained committed to their techno-Keynesian ideas and opposed any initiative for change. The collaborative links forged at the time of the Rowell-Sirois Commission between the leadership of the federal bureaucracy and a large number of academics (mostly economists) meant that they stood united in support of the national policy model they had created and they remained either opposed to, or only partially convinced of, the need for innovative policy ideas at that time.[175] Finally, Walter Gordon's vision of creating new state capacities to intervene directly in production issues and the development of new political strategies to mobilize consensus amongst business and labour groups and provincial governments about regional development priorities[176] were also questioned by a majority of the professional community of economists at that time.[177] There is also evidence that not every one of the commissioners was entirely comfortable with all of the Commission's conclusions and recommendations.[178] Nor did support for the Gordon Commission recommendations improve with the election of the Pearson administration. In this instance, the opposition in Cabinet to these proposals came from Mitchell Sharp and C.M. Drury, both former senior bureaucrats in C.D. Howe's Department of Economic Development in the St. Laurent government.[179]

In the years following its release, the Gordon Commission report attracted support from the advocates of both its policy models, each with its network of policy intellectuals and institutional bases, and each active in federal policy discourses.[180] Moreover, neither the political or bureaucratic institutions of the nation were able to effectively arbitrate between the two and decide on a course of action.[181] Nor did the Trudeau administration ever deal effectively with this policy dichotomy, although it did adopt a limited number of its interventionist-nationalist ideas, such as creating a publicly-owned oil company (Petro-Canada) and establishing the Foreign Investment Review Agency (FIRA).[182] Partly, this was due to that government's preference for a technocratic approach to managing the Canadian economy[183] and partly because of Prime Minister Trudeau's preoccupation with constitutional reform.[184] In this absence of clear political direction, federal departments felt free to pursue their own visions of the government's interests: visions grounded in long-established departmental philosophies, modus operandi, and corporate memory.[185]

The result of the policy dichotomy created by the Gordon Commission following its release in 1957 was that for the next decade and a half no significant policy changes were possible. Instead, both the Diefenbaker and Pearson administrations relied on ad hoc measures to deal with on-going economic and social problems. Not even the Trudeau administration managed to develop a systematic and coherent policy,[186] even though, under pressure from the NDP it adopted some the Gordon Commission's interventionist-nationalist ideas.[187] Part of the reason for this was the continued bureaucratic resistance well into the late 1970's to any major economic policy shift from the technocratic-Keynesianism model, which meant that there was no administrative institutional support or focus for the effective implementation of those policy changes that were attempted.[188] The Gordon Commission's inability to articulate a coherent public philosophy and develop a set of implementation proposals consistent with that philosophy was also a reflection of the continued influence of a traditional set of principles alongside the emerging policy agendas of those groups pursuing what Inglehart and Nevitte have described as a post-materialist agenda.

Bradford's account of the work and impact of three important royal commissions suggests that there are four interrelated factors which serve to determine whether a royal commission's work is successful in generating public policy change. First, there must be a perceived compelling reason or reasons for changing current policies and practices. This was the case with each of the royal commissions examined by Bradford, where serious economic problems and their associated social effects demanded attention. Second, the royal commission involved must develop coherent and credible alternatives to those policies and practices. As Bradford demonstrates, the failure of the Gordon Commission to affect policy change to the same extent as the Rowell-Sirois and MacDonald commissions was due (in part at least) to its inability to develop a coherent public philosophy. Third, there must exist, or the commission must create, supporting coalitions for its ideas and recommendations amongst elected officials, bureaucrats, and interested pressure groups. In the case of the Rowell-Sirois Commission, this was the techno-bureaucracy and its academic allies, and eventually, the MacKenzie-King government. With the MacDonald Commission, it was important business interests and their think-tanks, along with some provincial governments. With the Abella Commission, it was pressure groups representing women, native people, disabled persons, and members of visible minorities, along with some elected officials and senior mandarins, and, to some extent, organized labour. Significantly, although the Gordon Commission attracted advocates for both its "policy discourses," neither was successful in attracting the sustained political support nor the overwhelming public approval necessary to ensure that its position resulted in a significant change in policy. Fourth, the commission's ideas must become embedded in the governance institutions of the state, and perhaps more importantly, those ideas must come to dominate the discourse on an issue. As was demonstrated by Bradford in the case of the Gordon Commission, any weakness in the public philosophy undergirding the implementation ideas or the existence of unreconciled differences amongst the actors involved towards any of these elements means that existing policy may well not change in any significant way.

Bradford's account examines the impact of the work of three major royal commissions, two of which generated significant changes in Canada's economic policies: commissions whose investigations and recommendations not only spanned a wide range of issues but also had a significant impact on a large number of public policy areas.[189] All were created to deal with pressing policy matters at times when existing institutions and procedures were perceived as having failed to effectively come to grips with rapidly changing economic and social conditions. All dealt with what Simeon has called prevailing ideas about how to manage the Canadian economy in terms of what conditions actually existed, what ought to be done about them, and how to achieve that.[190] That is to say, the objective of each of these royal commissions was to generate and disseminate ideas as well as to suggest ways in which they could be embedded into Canada's governing institutions. Bradford's account demonstrates that some royal commissions are much more successful than others in terms of their impact on public policy in this country and that the significant changes in Canada's economic policies which resulted from the work of the Rowell-Sirois and MacDonald commissions is in sharp contrast to the inconclusive and sometimes contradictory results flowing from the work of the Gordon Commission.[191] Bradford's model also demonstrates that royal commissions are created to provide governments with public policy ideas (substantive ideas, and procedural ideas) with the objective of achieving change by embedding these ideas into the matrix of Canada's public institutions.

The Abella Commission

The creation, work, and results of the Abella Commission present both similarities with, and differences from, the commissions studied by Bradford. Thus, while the Rowell-Sirois, Gordon, MacDonald, and Abella commissions were created because the government of the day perceived a need to change policy, the intentions of the governments which created them and the nature of the issues they dealt with differed significantly. In Bradford's examples, the issues were economic; in the case of the Abella Commission, the issue was a social problem deemed to merit serious attention. In addition, the mandates of the commissions studied by Bradford called for the development of principles and implementation strategies to better manage the nation's economy in order to foster economic growth. On the other hand, the mandate of the Abella Commission was to provide the government with ideas for implementing a social policy already decided upon. Also, like the Rowell-Sirois and MacDonald commissions (but not like the Gordon Commission), the work and recommendations of the Abella Commission resulted in a profound change in existing public policy at the federal level, and for much the same reasons. That is, the Abella Commission produced a coherent public philosophy along with viable implementation ideas and it attracted the support of important players in the political arena. In effect, even though the economic and political contexts in which they were created differed, what the Rowell-Sirois, Gordon and MacDonald commissions were tasked with was to develop measures to generate wealth. On the other hand, the mandate of the Abella Commission was essentially one of developing a system of redistributing the wealth of the nation. These are not inconsiderable differences.

There is, however, a perhaps more interesting factor that emerges from the study of the work and outcomes of the Abella Commission. That is the fact that it was in existence at exactly the same time as the MacDonald but produced an effect which was in sharp contrast to that of the MacDonald Commission. The Abella Commission succeeded in persuading two successive federal administrations to implement a resolutely post-materialist social agenda at the same time that these same administrations adopted the MacDonald Commission's materialist solutions for the nation's economic difficulties at the time. This suggests that rather than replacing the traditional materialist concerns with economic growth and productivity the emergence of the post World War Two post-materialist ethos in advanced industrialized societies simply moved in tandem with it, at least in Canada.

Summation

Bradford's work appears to support Heclo's contention that public policy change results from the interaction of ideas, interests, and institutions. It also shows that this interaction operates in specific ways. That is, that in the cases of the Rowell-Sirois and MacDonald commissions, the principal ideas they advanced attracted the support of interests which were sufficiently influential in their time to move the governance institutions of the state to institute sometimes fundamental changes to traditional Canadian economic public policy. Moreover, his account of the work of the Gordon Commission indicates how its failure to articulate coherent policy proposals and to attract the support of enough interests to overcome objections raised to certain parts of those proposals generated inconclusive results. I argue that the results flowing from the work of the Abella Commission involved the same sort of interaction amongst ideas, interest, and institutions as those which resulted from the recommendations of the Rowell-Sirois and MacDonald Royal Commissions and had the same effect of producing a major change in public policy in Canada.

This dissertation is comprised of eight chapters. The second chapter traces the genesis and development of the ideas which eventually resulted in the establishment of legislated workplace affirmative action in Canada. It examines the work and recommendations of a number of commissions, task forces, Parliamentary committees, and other bodies which both formulated and refined the ideas that laid the intellectual groundwork which preceded the government's enactment of its Employment Equity Act. The third chapter records and describes the views of a number of the pressure groups representing women, native people, persons with disabilities, and members of visible minorities submitted to the Abella Commission regarding employment equity. The fourth chapter outlines the reservations, concerns, and opposition to, workplace affirmative action voiced by representatives of organized labour and employers or employer groups to that commission. The fifth chapter reviews the content and substance of the Abella Commission's report, which provided both the public philosophy and implementation ideas for the government's Employment Equity Act and its associated regulations and administrative guidelines. The sixth chapter records the process of embedding many of the Abella Commission's recommendations into the governance institutions of the state. It also describes the evolution of the Employment Equity Act from its introduction as Bill C-62 in 1984, to its proclamation in 1986. The seventh chapter records the experience of the actors involved with workplace affirmative action in the period from 1986 to the present, including an assessment of the modifications to the legislation made during that time and the reasons for it. The final chapter presents and summarizes the results of this research and assesses the degree to which the work and outcomes of the Abella Commission conform to Bradford's model.

1. Report of the Commission on Equality in Employment, (Ottawa: Minister of Supply and Services Canada, 1984.

   Hereafter referred to as the Abella Report.

2. This data was obtained as a result of a request made under the provisions of the Access to Information Act.

3. Abella Report, p. 7.

4. For an example of this see, Annis May Timpson, Driven Apart: Women's Employment Equity and Child Care in Canadian Public Policy, (Vancouver: UBC Press, 2001).

5. For the purposes of this dissertation the terms "workplace affirmative action" or simply "affirmative action" and "employment equity" will be used interchangeably. Although the term "employment equity" coined by Justice Abella is in common use in Canada at this time, as opposed to the American usage of "affirmative action," in Justice Abella's words "Ultimately, it matters little whether in Canada we call this process employment equity or affirmative action, so long as we understand that what we mean by both terms are employment practices designed to eliminate discriminatory barriers and to provide a meaningful way equitable opportunities in employment." (Abella Report, p. 7). In addition, the term "affirmative action" describes more precisely the nature of the practices associated with the administration of the legislation involved, as captured by its French equivalent of "action positive."

6. Isaiah Berlin, "Political Ideas in the Twentieth Century," in Four Essays on Liberty, (1969; rpt. Oxford: Oxford University Press, 1990), p. 7.

7. Report of the Royal Commission on the Status of Women in Canada, (Ottawa: Information Canada, 1970).

   Henceforth, this Royal Commission will be referred to as the Bird Commission, after its Chair, Florence Bird.

8. Ronald Inglehart, Culture Shift in Advanced Industrial Society, (Princeton, NJ: Princeton University Press, 1990.

9. Inglehart, p. 4.

10. Ibid.

11. Inglehart, p. 7.

12. Inglehart, p. 11.

13. Inglehart, p. 5.

14. Inglehart, pp. 5-7.

15. Inglehart, pp. 8-9.

16. Inglehart, pp. 10-11.

17. Neil Nevitte, The Decline of Deference: Canadian value change in cross-nation perspective, (Peterborough, ON: Broadview Press, 1996), p. 311.

18. Nevitte, The Decline of Deference, p. 19.

19. Op. Cit., p. 11.

20. Ibid.

21. Op. Cit., p. 9.

22. Op., Cit., p. 10.

23. Abella Report, p. 7 and p. 193.

24. The following is a small representative sample of the literature regarding affirmative action/employment equity: The Affirmative Action Debate, ed. Steven M. Cahn, (New York: Routledge, 1995); The Affirmative Action Debate, ed. George E. Curry, (Reading, MA: Perseus Books, 1998); Robert K. Fullinwider, The Reverse Discrimination Controversy: A moral and Legal Analysis, (Totowa NJ: Rowan and Littlefied, 1980); Harish C. Jain, "The Recruitment and Selection of Visible Minorities in Canadian Police Organization, 1985 to 1987," in Canadian Public Administration, Vol. 31, No. 4, pp. 463-482; Christine M. Koggel, "Expanding the Role of Role Modelling," pp. 340-359; Jan Narveson, "Fair Hiring and Affirmative Action," pp.313-326; both in Contemporary Moral Issues, 4th ed., eds, Wesley Cragg and Christine M. Koggel, (Toronto: McGraw Hill-Ryerson Limited, 1997); Martin Loney, The Pursuit of Division: Race, Gender, and Preferential Hiring in Canada, (Montreal & Kingston, McGill-Queen's University Press, 1998); Stephen G. Peitchinis, Women at Work: Discrimination and Response, (Toronto: McClelland & Stewart Inc., 1989); Lance W. Roberts, "Understanding Affirmative Action," in Discrimination, Affirmative Action, and Equal Opportunity: An Economic and Social Perspective, eds. W.E. Block and M. A. Walker, (Vancouver: The Fraser Institute, 1981), pp.147-182; Michel Rosenfeld, Affirmative Action & Justice, (New Haven, CT: Yale University Press, 1991); Thomas Sowell, "Weber and Bakke, and the Presuppostions of 'Affirmative

Action,'" in *Discrimination, Affirmative Action, and Equal Opportunity: An Economic and Social Perspective*, eds., W.E. Block and M.A. Walker, (Vancouver: The Fraser Institute, 1981), pp. 37-63, and "Affirmative Action: A Worldwide Disaster," in *Commentary*, Vol. 88, No. 6, Dec., 1989, pp. 21-41); Annis May Timpson, *Driven Apart: Women's Employment and Child Care in Canadian Public Policy*, (Vancouver: UBCPress, 2001; L.W. Sumner, "Positive Sexism," in *Contemporary Moral Issues*, 4th ed., eds., Wesley Cragg & Christine Koggel, (Toronto: McGraw Hill-Ryerson, 1997), pp. 326-340; and Conrad Winn, "Affirmative Action for Women: More Than a Case of Simple Justice," in *Canadian Public Administration*, Vol. 28, No. 1, pp. 24-46.

25. *The Affirmative Action Debate*, ed. Steven M. Cahn, (New York: routledge, 1995).

26. Michel Rosenfeld, *Affirmative Action and Justice: A Philosophical & Constitutional Inquiry*, (New Haven, CT: Yale University Press, 1991).

27. Rosenfeld, pp. 14-15.

28. Judith Jarvis Thomson, "Preferential Hiring," in *The Affirmative Action Debate*, ed., Steven M. Cahn, (New York: Routledge, 1995), pp. 58-60.

29. See, for example: Jennifer K. Bankier, "Equality, Affirmative Action, and the Charter: Reconciling 'Inconsistent' Sections, pp. 307-316; Marc Gold, "The Constitutional Dimensions of Promoting Equality in Employment, pp. 249-272; Patricia Hughes, "Issues Under the Charter, pp.319-327; Mary Jane Mossman, "Gender, Equality, and the Charter," pp. 299-316; and Katherine Swinton, "Restraints on Government Efforts to Promote Equality in Employment: Labour Relations and Constitutional Considerations, pp. 275-296, all in *Research Studies of the Commission on Equality in Employment*, (Ottawa: Minister of Supply and Services Canada, 1985.

30. See, as examples: Yves Chantal-Gagnon & Francine Létourneau, L'efficacité des programmes d'accès à l'égalité pour les femmes," in *Canadian Public Administration*, Vol. 39, No. 2, pp. 136-156; Harish C. Jain and Rick D. Hackett, "Measuring Effectiveness of Employment Equity Programs in Canada: Public Policy and a Survey," in *Canadian Public Policy*, XV:2, 1989, pp. 189-204; Joanne D. Leck, Sylvie St. Onge, and Isabelle Lalancette, "Wage Gap Change Among Organizations Subject to the Employment Equity Act," in *Canadian Public Policy*, XXI:4, 1995, pp. 387-400; and Janet M. Lum, "The Federal Employment Equity Act: Goals vs. Implementation," in *Canadian Public Administration*, Vol. 38, No. 1, 1995, pp. 45-76.

31. Naresh Agarwal, "Economic Costs of Employment Discrimination," 403-420, Diane Bellemare, Ginette Dussault, et Lise Poulin-Simon, "Les femmes et l'économie," pp. 333-340, and Monica Twonson, "The Socio-Economic Costs and Benefits of Affirmative Action for Canada, pp. 343-366, all in Research Studies of the Commission on Equality in Employment, (Ottawa: Minister of Supply and Services Canada, 1985); Gary S. Becker, "An Economic Theory of Discrimination,"129-141, and Walter Williams, "On Discrimination, Prejudice, Racial Income Differentials, And Affirmative Action," pp. 69-99, both in Discrimination, Affirmative Action, and Equal Opportunity, eds. W. E. Block and M. A. Walker, (Vancouver: The Fraser Institute, 1981).

32. The best and most comprehensive example of this is: Carol Agocs, Catherine Burr, and Felicity Somerset, Employment Equity: Co-Operative Strategies for Organizational Change, (Scarborough, ON: Prentice Hall Canada, Inc., 1992).

33. Aristotle, "Politics, Book V, Chap. 1" in The Basic works of Aristotle, ed. Richard McKeon, (New York: Random House, 1941), p. 1233.

34. Robert K. Fullinwider, The Reverse Discrimination Controversy: A Moral and Legal Analysis, (Totowa, NJ: Rowan and Littlefield, 1980), pp. 38-41.

35. For an example of this, see the views of the Canadian Organization of Small Business as reflected in their formal submission to the Abella Commission, National Archives of Canada, RG33-133(84-85/395), Vol. 4, File "Canadian Organization of Small Business."

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37. Hugh Heclo, "Ideas, Interests, and Institutions," in The Dynamics of American Politics: Approaches and Interpretations, (Boulder CO: Westview Press, 1994), pp.366-392.

38. Charles E. Lindblom, Inquiry and Change: The Troubled Attempt to Understand and Shape Society, (New Haven, CT: Yale University Press, and New York: Russell Sage Foundation, 1990), pp. ix and 11.

39. Robert Reich, "Introduction," in The Power of Public Ideas, ed. Robert Reich, (Cambrigde, MA: Ballanger Publishing Company, 1988), p. 3.

40. Peter Gourevitch, Politics in Hard Times: Comparative Responses to International Economic Crises, (Ithaca, NY: Cornell University Press, 1986), p. 43.

41. Neil Bradford, Commissioning Ideas: Canadian National Policy Innovation in Comparative Perspective, (Toronto: Oxford University Press, 1998) p. 13.

42. For a full account of this issue, see Rainer Knopff and F.L. Morton, Charter Politics, (Scarborough, ON: Nelson Canada, 1992).

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45. For a fuller treatment of the influence of groups and organizations on the development of policy ideas, see: Peter A. Gourevitch, "Keynesian Politics: The Political Sources of Economic Policy Choices," in The Political Power of Economic Ideas: Keynesianism Across Nations, ed. Peter A. Hall, (Princeton, NJ: Princeton University Press, 1989), pp. ; Peter A. Hall, "Introduction," in The Political Power of Economic Ideas: Keynesianism Across Nations, ed. Peter A. Hall, (Princeton, NJ: Princeton University Press, 1989), pp. ; Ronald Inglehart, "Values, Ideology, and Cognitive Mobilization in New Social Movements," in Challenging the Political Order: New Social and Political Movements in Western Democracies, eds., Russell J. Dalton and Manfred Kueschler, (New York: Oxford University Press, 1990), pp. 43-66; Charles E. Lindblom, Inquiry and Change: The Troubled Attempt to Understand and Shape Society, (New Haven, CT: Yale University Press, 1990); Mark H. Moore, "What Sort of Ideas Become Public Ideas?" in The Power of Public Ideas, ed., Robert B. Reich, (Cambridge, MA: Ballinger Publishing Company, 1988, pp.55-83; Garry R. Orren, "Beyond Self-Interest," in The Power of Public Ideas, pp. 13-29; Robert B. Reich, "Introduction," in The Power of Public Ideas, pp. 1-12; Dietrich Rueschmeyer and Theda Skocpol, "Conclusion," in States, Social Knowledge, and the Origins of Modern Social Policies eds., Theda Skocpol and Dietrich Rueschmeyer, (Princeton, NJ: Princeton University Press, 1996), pp. 296-312; and Carol H. Weis, "The Uneasy Partnership Endures: Social Science and Governments," in Social Scientists, Policy, and the State, eds., Stephen Brooks and Alain-G Gagnon, (New York: Praeger, 1990), pp. 97-111.

46. Richard Simeon, "Studying Public Policy," in Canadian Journal of Political Science, Vol. IX, No. 4, 1976, p. 573.

47. Hugh Heclo, "Ideas, Interests, and Institutions," in The Dynamics of American Politics, eds., Lawrence C. Dodd and Calvin Jillson, (Boulder, CO: Westview Press, 1994), p. 375.

48. Heclo, pp. 378-379.

49. Heclo, p. 381.

50. John C. Courtney, "In Defence of Royal Commissions," in Canadian Public Administration, Vol. 12, No. 2, 1969, pp. 207-208.

51. Bradford, pp. 34-40.

52. For a perceptive treatment of the Charter as a political institution, see Alan Cairns, "Reflections on the Political Purposes of the Charter: The First Decade," in Reconfigurations: Canadian Citizenship & Constitutional Change, ed. Douglas E. Willliams, (Toronto: McClelland & Stewart Inc., 1995), pp. 194-215. For a somewhat contrasting treatment of the Charter as a political institution, see Rainer Knopff and F.L. Morton, Charter Politics, (Scarborough, ON: 1992), pp. 35-60.

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54. Sylvia Bashevkin, "Does public opinion matter? The adoption of federal royal commission and task force recommendations on the national question, 1951-1987," in Canadian Public Administration, Vol. 31, No.3, 1988, p. 390.

55. G. Bruce Doern, "The Role of Royal Commissions in the General Policy Process and in Federal-Provincial Relations," in Canadian Public Administration, Vol. 10, No. 1, 1967, p. 421.

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57. Innis Christie and A. Paul Pross, "Introduction," in Commissions of Inquiry, eds. A. Paul Pross, Innis Christie, and John A. Yoggis, (Toronto: Carswell Co. Ltd., 1990), p. 13.

58. Seymour Wilson, "The Role of Royal Commissions and Task Forces," in Structures of Policy-Making in Canada, eds., G. Bruce Doern and Peter Aucoin, (Toronto: ON: The Macmillan Company of Canada, 1971), p. 115.

59. Doern, p. 422.

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61. G. Bruce Doern & Richard W. Phidd, Canadian Public Policy: Ideas, Structure, Process, (Toronto, ON: Methuen Publications, 1983), p. 320.

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63. Alan C. Cairns, "Reflections on Commission Research, " in Commissions of Enquiry, eds., A. Paul Pross, Innis Christie, and John A. Yoggis, (Toronto, ON: Carswell Co. Ltd., 1990), fn. p. 92.

64. Bradford, p. 35.

65. For example, it was a special prosecutor who investigated allegations of wrongdoing by U.S. President Clinton when he was still Governor of Arkansas.

66. John C. Courtney, "In Defence of Royal Commissions," in Canadian Public Administration, Vol. 12, No. 2, 1969, p. 198.

67. Ibid.

68. Hodgetts, p. 476.

69. Hodgetts, pp. 476-477.

70. Hanson, p. 357.

71. Hodgetts, p. 477.

72. The royal commissions sampled were: the Rowell-Sirois Commission on Dominion-Provincial Relations, 1940, (5 members); the Massey Commission on National Development in the Arts, Letters and Sciences, 1951, (5 members); the Gordon Commission on Canada's Economic Prospects, 1957, (5 members); the Glassco Commission on Government Organization, 1962, (3 members); the first Hall Commission on Health Services, 1964, (7 members); the Dunton-Laurendeau Commission on Bilingualism and Biculturalism, 1967, (10 members); the Bird Commission on the Status of Women in Canada, 1970, (7 members); the Berger Commission on the MacKenzie River Pipeline, 19–, (1 commissioner); the Hickman Commission on the Ocean Ranger Marine Disaster, 1984, (6 members); the MacDonald Commission on the Economic Union and Developmental Prospect for Canada, 1985, (10 members); and the Abella Commission on Equality in Employment, 1985, (1 commissioner). The dates given are the years that these commissions formally submitted their final reports.

73. A.M. Willms, "The Administration of Research on Administration in the Government of Canada," in Canadian Public Administration, Vol. 10, No. 4, 1967, p. 408.

74. Courtney, p. 198.

75. Courtney, pp. 199-200.

76. Courtney, p. 199.

77. Courtney, p. 200.

78. C.E.S. Walls, "Royal Commissions–their Influence on Policy," in Canadian Public Administration, Vol. 12, No.3, 1969, p. 565.

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80. Hodgetts, p. 483.

81. Courtney, p. 198.

82. Hanson, p. 357.

83. G. Bruce Doern, "The Role of Royal Commissions in the General Policy Process and in Federal-Provincial Relations," in Canadian Public Administration, Vol. 10, No. 1, 1967, p. 429.

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86. Courtney, p. 208.

87. Innis Christie and A. Paul Pross, "Introduction," in Commissions of Inquiry, eds., A. Paul Pross, Innis Christie, and John A. Yoggis, (Toronto: Carswell Co. Ltd., 1990), p. 3.

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89. MacKay, p. 32. In this instance, MacKay cites Liora Salter and Debra Salco, Public Inquries in Canada, (Hull, QB: Canadian Government Publishing Centre, 1981).

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91. Walls, pp. 369-370.

92. T.H. McLeod, "Glassco Commission Report," in Canadian Public Administration, Vol. 6, No. 1963, pp. 387-388.

93. Willms, pp.411-416.

94. McKay, pp. 37-43.

95. Hanson, p. 357.

96. Hanson, p. 361.

97. Doern, p. 417.

98. Courtney, pp. 209-211.

99. J.E. Hodgetts, "Should Canada be De-Commissioned?: A Commoner's View of Royal Commissions," in Queen's Quarterly, Vol. LXX, Winter, 1963-64, p. 476. See also, John C. Courtney, "In Defence of Royal Commissions," in Canadian Public Administration, Vol. 12, No. 2, 1969, p. 201.

100. For an overview of the literature on royal commissions in a Canadian context see: Peter Aucoin, "Contributions of Commissions of Inquiry to Policy Analysis: An Evaluation," in Commissions of Inquiry, (Toronto: Carswell, 1990, pp. 197-207; Sylvia Bashevkin, "Does public opinion matter? The adoption of federal royal commission and task force recommendations on the national question, 1951-1987," in Canadian Public Administration, Vol.31, No. 3 1988, pp.390-407; Alan C. Cairns, "Reflection on Commission Research," in Commissions of Iquiry, eds. A Paul Pross, Innis Christie, and John A. Yoggis, (Toronto: Carswell, 1990, pp.87-108; Alan Cairns, S. Grange, and E.C. Harris, "The Commission and Its Report: Public Education, Advocacy and Lobbying," in Commissions of Iquiry, eds., A. Paul Pross, Innis Christie, and John A. Yoggis, (Toronto: Carswell, 1990, pp. 161-172; Innis Christie and A. Paul Pross, "Introduction," in Commissions of Inquiry, eds., A. Paul Pross, Innis Christie, and John A. Yoggis, (Toronto: Carswell Co. Ltd., 1990, pp. 1-18; John C. Courtney, "In Defense of Royal Commissions," in Canadian Public Administration, Vol. 12, No. 2, 1969, pp. 198-212; G. Bruce Doern, "The role of royal commissions in the General Policy Process and in Federal-Provincial Relations," in Canadian Public Administration, Vol. 10, No. 1, 1967, pp. 417-433; G. Bruce Doern & richard W. Phidd, Canadian Public Policy: Ideas, Structure, Process, (Toronto: Methuen Publications, 1983; Hugh R. Hanson, "Inside Royal Commissions," in Canadian Public Administration, Vol. 12, No. 3, 1969, pp. 356-354; J. E. Hodgetts, "Should Canada be De-Commissioned?: A Commoner's View of Royal Commissions," in Queen's Quarterly, Vol. LXX, Winter, 1963-64, pp. 475-490; Frank Iacobucci Q.C., "Commissions of Inquiry and Public Policy in Canada," in Commissions of Inquiry, eds., A. Paul Pross, Innis Christie, and John A. Yoggis, (Toronto: Carswell Co. Ltd., 1990, pp. 21-28; A. Wayne McKay, "Mandates, Legal Foundations, Powers, and Conduct of Commissions of Inquiry," in Commissions of Inquiry, eds., A. Paul Pross, Innis Christie, and John A. Yoggis, (Toronto: Carswell Ltd., 1990, pp.29-47; T.H. McLeod, "Glassco Commission Report," in Canadian Public

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101. Bradford, p. 159.

102. Innis Christie and A. Paul Pross, "Introduction," in Commissions of Inquiry, eds. A. Paul Pross, Innis Christie, and John A. Yoggis, (Toronto: Carswell Co. Ltd., 1990), p. 13.

103. Seymour Wilson, "The Role of Royal Commissions and Task Force," in Structures of Policy-Making in Canada, eds., G. Bruce Doern and Peter Aucoin, (Toronto: ON: The Macmillan Company of Canada, 1971), p. 115.

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105. Hugh R. Hanson, "Inside Royal Commissions," in Canadian Public Administration, Vol 12, No. 3, 1969, p. 362.

106. G. Bruce Doern & Richard W. Phidd, Canadian Public Policy: Ideas, Structure, Process, (Toronto, ON: Methuen Publications, 1983), p. 320.

107. Hodgetts, "Public Power and Ivory Power," in Agenda 1970: proposals for a creative politics, (Toronto: Toronto University Press, 1968), p. 271.

108. Alan C. Cairns, "Reflections on Commission Research, " in Commissions of Enquiry, eds., A. Paul Pross, Innis Christie, and John A. Yoggis, (Toronto, ON: Carswell, 1990), fn. p. 92.

109. Abella Report, pp i-ii.

110. See, for instance, Peter Aucoin, "Contributions of Commissions of Inquiry to Policy Analysis: An Evaluation," in Commissions of Inquiry, eds., A Paul Pross, Innis Christie, and John A. Yoggis, (Toronto: Carswell, 1990), pp. 197-207 and

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115. Report of the Royal Commission on the Status of Women in Canada, (Ottawa: Information Canada, 1970).

116. Timpson, pp. 99-101.

117. Bradford, p. 27.

118. Bradford, p. 30.

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120. Bradford, p. 31.

121. Bradford, p. 35.

122. Bradford, pp. 32-33.

123. The term is Bradford's, p. 62.

124. Bradford, p. 34.

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126. Bradford, p. 34

127. Bradford, pp. 38-42 and 45-51.

128. MacIntosh's economic views can be found in, W.A. MacIntosh, The Economic Background of Dominion-Provincial Relations: Appendix III of the Royal Commission on Dominion-Provincial Relations, ed. J.H. Dales, (Toronto: McClelland and Stewart Limited, 1964).

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130. Bradford, p. 28.

131. Bradford, p. 30.

132. Bradford, p. 37.

133. Bradford, p. 36.

134. Bradford, pp. 39-40.

135. Ibid.

136. Bradford, p. 40.

137. Bradford, p. 39.

138. Bradford, p. 42.

139. Bradford, p. 43.

140. Bradford, p. 46.

141. Ibid.

142. Bradford, p. 103.

143. Bradford, p. 112.

144. Ibid.

145. Bradford, p. 112.

146. The terms are Bradford's, pp. 63-64.

147. Bradford, p. 121.

148. Bradford, p. 113.

149. Bradford, pp. 117-126.

150. Bradford, pp. 127-128.

151. Bradford, p. 120.

152. Bradford, p. 113.

153. Ibid.

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155. Bradford, pp. 119-122.

156. Bradford, pp. 123-126.

157. Bradford, p. 60.

158. Bradford, p. 57.

159. The term is Bradford's. p. 69.

160. Ibid.

161. Bradford, p. 61.

162. Ibid.

163. Bradford, 187n.

164. Bradford, p. 62.

165. Ibid.

166. Bradford, p. 64.

167. Bradford, p. 63.

168. Bradford, pp. 62-63.

169. Bradford, pp. 63-64.

170. Bradford, p. 64.

171. Bradford, p. 63.

172. Bradford, p. 65.

173. Bradford, pp. 68-69.

174. Ibid.

175. Bradford, p. 59.

176. Bradford, p. 74.

177. Bradford, p. 80.

178. Denis Smith, Gentle Patriot: A Political Biography of Walter Gordon, Edmonton, Hurting Publishers, 1973, p. 37. Here Smith cites Walter Gordon's Memoirs.

179. Bradford, p. 71.

180. Bradford, p. 83.

181. Bradford, p. 81.

182. Bradford, p. 95.

183. Bradford, p. 96.

184. Bradford, p. 95.

185. Bradford, pp. 99-100.

186. Bradford, pp. 90-100.

187. Bradford, p. 95.

188. Bradford, p. 98.

189. The first was the Rowell-Sirois Commission, created in 1937 to advise the federal government on federal-provincial economic relations in the face of the difficulties for all governments resulting from the world-wide depression of the 1930's. The next was the Gordon Commission, established in 1955 to provide the government with economic policy advice in order for it to deal with problems generated by the

1953-54 major downturn in the Canadian economy and the inability of what Bradford has called Canada's "technocratic-bureaucratic community" of federal mandarins to deal with this and other conditions resulting from far-reaching changes in international economic relations. The last was the MacDonald Commission, set up in 1982 to advise the government on the "appropriate goals and policies for national economic development" to deal with the country's pressing and persistent high unemployment, serious inflation, and the emergence of globalization as an economic threat to the Canadian economy, amongst others.

190. Simeon, p. 566. See also pp. 570-573 for an elaboration of this theme.

191. For a full account of the significance of the work of the Rowell-Sirois Commission, see particularly Chapter Two, "Creating the Second National Policy, 1930-1950: Economic Ideas and Bureaucratic Mobilization," pp-23-52. His account of the tribulations of the Gordon Commission and its aftermath are found in Chapter Three, "Searching for a New National Policy: Economic Ideas and Party Politics," 1950-1965, pp.53-80, and Chapter Four, "Still Searching, 1965-1975: Economic Ideas and Bureaucratic Politics," pp. 83-101. The work and influence of the MacDonald Commission is told in Chapter Five, "Creating the Third National Policy, 1975-1995, pp. 102-130.

Chapter Two

FOUNDATIONS

The Influence of Ideas

This is a chapter about ideas: how they come into being and how they can be (and are) under favourable circumstances adapted to serve a multiplicity of interests. It traces the evolution of the post-materialist public policy ideas advanced by the Royal Commission on the Status of Women in Canada[1] whose purpose was to ensure equality in the workplace for women and describes the manner in which these ideas were later applied to serve the interests of native people, disabled persons, and members of visible minorities; ideas which were later used as the template for the mandate of the Royal Commission on Equality in Employment,[2] created to advise the government how to institute workplace affirmative action legislation in Canada. As will be seen, these ideas can be termed post-materialist in the sense that they emphasize notions of justice, equality, rights and the redistribution of wealth, as opposed to the materialist considerations of economic efficiency and wealth creation.

While the impetus to promote affirmative action in the workplace in the United States emerged out of the struggles associated with the Civil Rights Movement in that country, the incentive for the introduction of employment equity in Canada grew out of the agitation by women's groups for a more preeminent role in society for women. The initial lobbying to establish a royal commission to examine and report on the status of women in Canada came from the Federation of University Women.[3] However, this suggestion was itself part of a wider spectrum of civil rights concerns which motivated a whole spectrum of pressure groups to press for measures to protect the rights of citizens against arbitrary government action.[4] It also reflected the influence of efforts by both the International Labour Organization and the United Nations to promote the cause of women and minorities.[5] In addition, the political left in Canada promoted measures to end workplace discrimination against women and ethnic minorities through the application of state "positive action" by enacting comprehensive human rights legislation with effective enforcement mechanisms. Such measures were also supported by activists in organized labour in Canada.[6] This activity no doubt reflected in a Canadian setting what Inglehart has termed as an "intergenerational value change:"[7] a shift in the way that Canadians thought about their world following World War Two. It was the influence of the ideas first enunciated by the Bird Commission to improve the status of women in the workplace which over a decade or so served as the catalyst to generate the critical mass of political and administrative support that made possible the enactment of the Employment Equity Act by the federal government a decade and half later.

The Bird Commission was established in February, 1967, to examine ways by which the federal government could create more equal opportunities for women in all aspects of economic and social activity, including employment.[8] A number of the policy ideas advanced by that Commission which dealt specifically with the employment issues of concern to women will be used here as a framework to assess the findings of a number of subsequent reports on the working conditions faced by women and members of other groups in Canada which were prepared by a number of Parliamentary Committees, administrative task forces, and public and quasi-public bodies.[9] The data from these reports illustrates the manner in which the fundamental assumptions about the difficulties faced by women in the labour market first articulated in the Bird Report were reflected in those subsequent reports, were welcomed by pressure groups advocating workplace affirmative action, were supported by some elements of the federal bureaucracy which stood to gain from its introduction,[10] and were eventually adopted by the government as the basis for the introduction of employment equity legislation in Canada.

The Order-in-Council of February, 1967, which created the Bird Commission mandated it to:

> inquire into and report upon the status of women in Canada, and to recommend what steps might be taken by the federal government to ensure for women equal opportunities with men in all aspects of Canadian society....[11]

More specifically, the Commission was enjoined to enquire into and report upon the following nine areas, which were deemed by the government to be particularly germane to the interests of women: (1) federal laws and practices affecting the political rights of women; (2) the role of women in the labour force, particularly the problems faced by married women; (3) measures that might be taken under federal jurisdiction to provide training and re-training to enable women to re-enter the labour force as professionals; (4) the application of federal labour laws and regulations as these affected women; (5) the effect of laws, policies and practices as these affected women in federal government departments, agencies and Crown corporations; (6) federal taxation measures relevant to women; (7) marriage and divorce issues; (8) criminal laws affecting women; and (9) immigration and citizenship laws, policies and practices, as these affected women.[12] That mandate makes it clear that this Royal Commission's task was intended to be both comprehensive and extensive and its report indicates that it did indeed examine all these matters, often in considerable detail. However, this review of the work of that Commission and its impact on later events is limited to the four items which have a direct bearing on employment issues: that is, the role of women in the labour force, measures under federal jurisdiction to provide training or re-training for women to participate in the labour force as professionals, the application of federal labour laws and regulations as these affect women, and the effect of laws, policies and practices on women in federal government departments, agencies, and Crown Corporations.

In discharging its mandate, the Commission grounded its work and recommendations on the following four fundamental assumptions: (1) that women have the right to choose to work outside the home; (2) that the care of children is the responsibility of both parents and of society; (3) that society has a particular responsibility to provide "special treatment" for women, since it is women who bear society's children; and (4) that women require interim "special treatment" measures to overcome the adverse effects of discrimination.[13] Guided by these principles, the following substantive ideas emerged from the Bird Commission's treatment of the problems faced by women in the labour market: (1) that labour markets systematically discriminate against women;[14] (2) that it is the aggregate experience of the group, not that of individuals, which is important in establishing the presence of discrimination in the workplace;[15] (3) that society has an obligation to provide special measures in support of women in the workplace;[16] (4) that labour markets are not effective mechanisms for ensuring equality of opportunity for women in the workplace;[17] and (5) that state action is the most effective remedy for the adverse effects of discrimination against women in the workplace.[18] This brief summation is not to suggest that the report did not treat these themes in a nuanced and qualified fashion. It did. Rather this represents a distillation of those perspectives, areas of concern, and recommendations for action advanced by the Bird Commission which dealt with the experience of women at work.

The themes outlined above emerged, with variations, in the reports and studies produced during the decade following the release of the Bird Report. Given that these later reports and studies dealt with workplace issues affecting other groups as well as women, for the purposes of this discussion these themes are recast as follows: (1) systematic discrimination exists against designated group members in the workplace, (2) the aggregate experience of the group, not that of individuals, establishes the existence of discrimination in the workplace, (3) society has an obligation to provide special measures to support designated group members in the workplace, (4) labour markets are ineffective mechanisms for ensuring equality in the workplace, and (5) state intervention is the most effective remedy for adverse effects inflicted on designated group members in the workplace. The variations on these themes are explored below.

Systematic Discrimination Against Designated Group Members Exists in the Workplace

The claim that there exists discrimination in the workplace is to be found in each of the reports and studies examined. For example, in a series of studies sponsored by Statistics Canada and the C.D. Howe Institute entitled Opportunity for Choice: A goal for women in Canada the objective was to determine to what extent women's choices to participate in the labour market are constrained by factors related to their sex and to what degree those factors entailed costs of achievement for women in the labour market greater than those borne by men.[19] In one of these studies entitled "Opportunity for Choice: A Criterion," Cook argues that there are two kinds of discrimination against women in the labour market. These she categorizes as "erroneous" and "deliberate." By erroneous she means that employers either lack information about the true capacity of women to function effectively in the workplace and so overlook them, or that such information is inaccurate, with the same result. Deliberate discrimination she categorizes as employers' preferences for males instead of females.[20] Cook rejects the argument that the career choices of women are solely voluntary and asserts that their choices are influenced by virtue of their being women.[21] Moreover, Cook argues that evidence that women succeed in any occupation does not constitute evidence that women do not pay a higher cost for this than do men for equal success.[22] On the other hand, Cook cautions against assuming that any and all discrepancies between the wages and career opportunities of men and women are due exclusively to discrimination. On this issue, she notes that factors like the presence of few women in an occupation, differences in training and experience, and the existence of part-time work, amongst others, can also account for part of the differential.

In a study entitled "Work Patterns" in the same Statistics Canada-C.D. Howe Institute series, Gunderson notes that because of household and family responsibilities, as a group women have been, and continue to be, discriminated against in the labour market by employers, co-workers, and the customers or clients of an enterprise because of custom, misinformation, or fears for their job security by other workers. He argues that the consequences of such discrimination is to segregate women into female-dominated, low-paying occupations with few of the normal worker benefits.[23] In that same Statistics Canada-C.D. Howe series of studies, Cook and Eberts in a piece entitled "Policies Affecting Work" assert that the accomplishments of women in the labour market are always inappropriately measured on scales designed for men, to the detriment of women's interests.[24] They argue that women ought to be able to make career choices unburdened by their sex and that society should devise measures to dissociate the costs of such choices from the sex of the individual.[25] They also stress that women participating in the labour force are segregated into occupations providing lower rates of pay than those enjoyed by men.[26]

In December, 1979 the Economic Council of Canada published a study by Monica Boyd and Elizabeth Humphreys which sought to explain the lower average earnings of women as compared to those of men.[27] Based on their examination, the authors assert that, on average, at the time of the study, men working full-time (as defined for the study) earned a total of $9,932.00 per year while women, on average, earned $6,151.00 for full-time work, or sixty-two per cent of what men earned.[28] They argue that their findings show that women are not disadvantaged in the workplace because of a lesser level of education, occupational status, or work experience,[29] but rather because women do not benefit from their education, occupational status, and work experience to the extent men do.[30]

In 1984, the Economic Council of Canada released a study it commissioned entitled The Changing Economic Status of Women. In this, the authors, Jac-André Boulet and Laval Lavallée note that while the earnings gap between men and women shrank in the previous decade, it is still large.[31] They add that job segregation for women still exists and moreover is likely to continue for some time, mostly because few men will enter female-dominated occupations.[32] They also suggest that the introduction of the computer in the workplace will have a greater adverse impact on female jobs than on those of males.[33] Boulet and Lavallée indicate that women face four kinds of difficulties not encountered by men in the labour market. The first is that it is more difficult for women to diversify their education to the same extent as men in preparing themselves for a career or occupation. The second is that women face greater obstacles than men in finding work commensurate with their qualifications. The third is that women find it more difficult to obtain the same level of earnings once they are hired. The fourth is that women encounter greater impediments than do men in securing professional development training from the institutions or firms which employ them.[34] They add that in addition to the above, one of the major reasons that women find it difficult to participate successfully in the labour market on an equal footing with men is that women assume a disproportionate share of family and household responsibilities.[35] In an earlier report dealing with the issue of skill shortages, the Council also asserts that, "relative to their number in the labour force, women experience greater difficulties in the labour market..."[36] than do men, and that these difficulties are the result of discrimination in some cases.[37]

In the same vein, a Parliamentary Task Force on Employment Opportunities for the 1980's notes that native people encountered both discrimination and inadequate training, conditions which make it difficult for them to participate in the labour market on an equal footing with others.[38] The Task Force also notes that the disabled have to overcome the twin barriers of a disability and an attitudinal disposition on the part of employers.[39] Likewise, a report prepared for the then Minister of Employment and Immigration by a Task Force of public servants asserts that employment discrimination is a complex and pervasive phenomenon which goes beyond simple employer prejudice or ill will but is inherent in the very structure and functioning of labour markets themselves. According to the Task Force, these structures and functions create "patterns and practices" which, while neutral on their face, nevertheless erect barriers for target group members[40] The Task Force labels this as "systemic discrimination."[41] This terminology emerges later as a key concept in the Abella Report and in the operational guidelines for employers established under the federal government's employment equity legislation, where it is sometimes labelled as "systemic barriers."[42] There the notion of systemic discrimination is delineated in terms of employer practices with respect to: recruitment, selection, training, promotion, evaluation, compensation, benefits, conditions of employment, layoff and recall, and discipline and termination.

The public servant Task Force also indicates that its analysis reveals that in 1978 women still earned, on average, about 58 per cent of what men earned. In addition, it concludes that, in part at least, this wage gap results from discrimination in the workplace,[43] and that this holds, with variations, for all levels of education and training.[44] It also notes that the difficulties faced by native people in the labour market are the result of a combination of: limited economic opportunities on reserves or in remote areas, where many live; the demographic pressures of a native "baby boom"; lower than average education and skill levels when competing in urban labour markets; family breakdown; jurisdictional divisions in terms of responsibility for native affairs between the federal and provincial governments; and the negative effects on natives of employment development and training programs designed to serve the different needs of the general population.[45]

The Aggregate Experience of the Group, Not That of Individuals, Establishes the Presence of Discrimination in the Workplace.

The Bird Commission Report treats the experience of women in the labour market as one of being the object of discrimination in terms of pay, employment benefits, and access to promotion on the basis that women were underpaid with respect to men and were disproportionately absent in senior positions in business, industry, and government.[46] Similarly, the Boyd-Humphreys study cited earlier indicated that on average, women earned sixty-two per cent of what men earned.[47] The same kind of comparative statistical approach was employed in crafting the Dodge Report, which notes in part, that belonging to a target group "implies a disproportionate probability of labour market problems relative to the rest of the workforce."[48] In addition, that report also contends that employment discrimination was inherent in traditional institutional hiring and promotional practices. This notion it labels as "systemic discrimination":[49] a concept which re-emerges in the Abella Commission Report. In practice, this defines employment discrimination as the result of systems or practices which have the effect of excluding target group members from the employment benefits they could be expected to receive on the basis of their representation in the labour force. This principle has however, been challenged as flawed in that it fails to take into account age differences, cultural preferences, educational achievement and individual performance.[50] Part of the appeal for this kind of comparative statistical approach is, of course, that items like the average earnings of categories of individuals, as well as their average access to positions of authority and influence in an organization, are relatively easy to identify and quantify. On the other hand, considerations of major importance to employers, such as the availability and skills of workers, and the personal decisions of individuals to choose one occupation over another, as well as employer preferences, are not only much more difficult to identify but are also much more likely to be subjective in nature and thus not lend themselves readily to the statistical methods that formed the basis for these and other studies as well as the recommendations of the Abella Commission.

Society Has an Obligation to Provide Special Measures in Support of Designated Group Members in the Workplace

The post-materialist notion that society has an obligation to provide special measures to assist women to succeed in the workplace advanced by the Bird Commission was extended later to include native people, disabled persons, and members of visible minorities as the victims of discrimination in the workplace. A Special Committee set up by the House of Commons to identify problems faced by disabled persons[51] advocates that the government broaden the definition of the term handicap for its hiring purposes[52] and provide basic aids and attendant services for the disabled individuals that it hires as public servants.[53] It also urges the federal government to amend its legislation to provide for the preferential treatment of its employees unable to perform their duties because of a disability to secure other suitable work within government operations[54] and calls on the government to encourage private sector employers to provide preferential treatment for their employees disabled because of off-the-job incidents or prolonged illness by offering them other work opportunities within the enterprise.[55] Similarly, another House of Commons special committee established to, "examine and report upon shortages in skilled and higher skill occupations in Canada..."[56] recommends that the federal government's employment and training programs be designed to: (a) make exceptional efforts to encourage women to enter apprenticeable trades and to have industry provide special measures in support of those who do so;[57] (b) ensure that where necessary those taking employment training courses are provided with adequate daycare support;[58] (c) provide special training programs for women, native people, the handicapped, and minorities;[59] and (d) require training institutions to reserve training places for the handicapped.[60]

Labour Markets Are Ineffective Mechanisms for Ensuring Equality in the Workplace

The notion that labour markets are ineffective mechanisms for ensuring equality in the workplace for disadvantaged groups is a recurring theme in most of the studies and reports which followed the Bird Report. In 1975, a submission by the Canadian Council on Social Development to the Senate Standing Committee on National Finance advocates the post-materialist ideas that policy makers look beyond strictly market concepts in shaping public policy.[61] In the same vein, it asserts that given the economic system in Canada, work in the marketplace is assigned a value but work in the home is not.[62] It adds that any entitlement to what it calls "social rights," including publicly funded program support for employment training, ought to be based on the needs of people, rather than on what it terms the "accidents of the market."[63] It also argues that equity criteria ought to be given equal weight with economic considerations in the formulation of public policy.[64] That is, that considerations other than strictly economic ones must be considered in the operation of the labour market. In a related approach, Cook takes it as a given that the position of women in the labour market in Canada is inextricably linked with what she terms the "mixed capitalistic-governmental nature" of the Canadian economy.[65] She adds that, because of this, only paid productive activity in the workplace is recognized and rewarded with income, while the unpaid work women do in the home is ignored. Also, a 1982 Economic Council of Canada report intended to provide policy-makers with the insights into the nature of the labour market in Canada during the remainder of the decade,[66] notes that women, youth, native people, disabled persons, and generally those whose labour market skills are obsolescent are "over-represented among those Canadians who do not benefit from participation in the labour market."[67] It adds that the allocation of jobs by the market alone is defective in that it harbours impediments based on grounds of age, sex, ethnicity; that it limits entry to certain occupations; and that it creates barriers to geographical mobility. In other words, the unrestrained functioning of the labour market does not serve the interests of members of these groups. Likewise, the report of the Parliamentary Task Force on Employment Opportunities for the 1980's notes that women are paid less than men for the same work and the wage gap between them cannot be explained solely by the fact that on average women have less experience in the work force than men.[68] It also indicates that most employers are unwilling to bear the costs of providing special facilities to accommodate disabled workers.[69]

The public sector task force established by the Minister of Employment and Immigration to examine labour market development in the 1980's stresses that labour markets in Canada fail to properly utilize the energy and talents of members of the groups it identifies as requiring government assistance, (women, native people, disabled persons, youths, and older workers—but not members of visible minorities) thereby inhibiting the country's economic growth and productive capacity.[70] It also notes that women are generally restricted in their career choices to traditional clerical, sales, and services occupational categories, which it indicates are normally low-paying, with little or no promotional opportunities.[71] In addition, it emphasizes that the labour market allows for the existence of unnecessary physical requirements imposed for entry into many occupations, coupled with the failure of employers to make necessary accommodations to compensate for disabilities.[72]

State Intervention as the Most Effective Remedy for the Adverse Effects Inflicted on Designated Group Members in the Workplace

As with the position of the Bird Report, most of the suggestions advanced to ensure equality in the workplace for members of a variety of groups examined for this project opt for some form of state intervention in the workplace as the only effective remedy to address the perceived discrimination there. That is, every one of these studies or reports supports the application of greater state direction and control of the labour market to one extent or another. For instance, in a 1975 submission to the Senate Standing committee on National Finance the Canadian Council on Social Development argues that governments "must themselves discriminate strongly in favour of the poor in order to countervail the cluster of handicaps facing the poor in their attempt to find satisfying work."[73] It should be noted that in this report the Council approaches the question of equality in the workplace in terms of the problems encountered by the poor and not on the basis of age, sex, disability, or ethnicity, as do others. As did many others, Cook favours the establishment of measures to improve the conditions for women in the labour market.[74] She also advocates that private employers be made "agents of society" so that women are treated fairly in the labour market.[75] Cook and Eberts advocate the establishment of state agencies to investigate at their own discretion employers' personnel practices, with the power to initiate legal action (including class action suits) where such bodies believe that women have been discriminated against.[76] They also advocate that employers be required to train and promote women.[77] And in a move aimed squarely at private sector employers not subject to federal regulation, Cook and Eberts recommend that some form of contract compliance regime be instituted to force such employers to establish affirmative action programs in favour of women.[78] Finally, they suggest that employers be required to establish data bases based on the sex of their employees in order to facilitate comparisons of an enterprise's demographic profile against that of the labour force in which it operates, as a means of measuring the extent to which the first reflects the second.[79] These last two recommendations re-emerge with a expanded mandate in the report of the Abella Commission and are later incorporated into the federal government's employment equity legislation as well as its related regulations and operational guidelines.

Boyd and Humphreys, in their work for the Economic Council of Canada, argue that voluntary ameliorative policies intended to upgrade the human capital skills of women do not result in closing the income gaps between men and women in the labour market in Canada.[80] Instead, they recommend state-directed measures aimed at obliging both private and public enterprises to equalize the incomes of both sexes.[81] In its report, the House of Commons Special Committee established to examine problems encountered by the disabled and handicapped, recommends that the federal government establish affirmative action programs for all its departments, agencies, and Crown corporations to provide for: (a) special recruitment and training measures for the disabled; (b) timetables for the implementation of such measures; (c) ongoing review of these measures; (d) the establishment of an Affirmative Action Compliance Board to oversee the process; and (e) the publishing of annual reports on progress made.[82] The Committee also recommends that the successful implementation of affirmative action programs for the disabled be made a condition for the positive evaluation of the performance of departmental deputy heads and other senior federal managers.[83] In addition, the Committee proposes that federal government departments, agencies, and Crown corporations be required to give preference to organizations dedicated to employing disabled persons when purchasing goods or services.[84] With respect to dealing with private sector employers, the Committee recommends that all employers falling under federal jurisdiction be required to establish affirmative action programs for disabled individuals.[85] It also calls on the government to establish contract compliance measures to require firms with more than one hundred employees not subject to federal regulation who wish to do business with the federal government to implement affirmative action programs in favour of disabled individuals.[86] Another Parliamentary group, the Task Force on Employment Opportunities for the 1980's, also calls for the government to establish affirmative action programs for (and hire more) women, native people, handicapped persons, and members of visible minorities.[87] In addition, it calls for the government to establish a system of contract compliance to ensure that private sector firms providing goods or services to the government be required to train all of their employees in a manner acceptable to the government.[88]

The public servant task force set up by the then Minister of Employment and Immigration to examine ways to improve the functioning of the labour market in Canada during the 1980's also concludes that the long term employment problems faced by women, native people, disabled persons, youths, and older workers necessitates state intervention in the labour market.[89] This Task Force argues that existing voluntary affirmative action programs aimed at increasing the labour market participation of designated group members have resulted in no more than limited gains for such workers.[90] In their place, it recommends the establishment of mandatory programs as the most effective way of ensuring the greater participation of designated groups in the labour market.[91] To deal with the issues it identified as barriers to designated group participation in the labour market, the Task Force recommends three broad strategies for the government to follow. The first is to improve existing—or create new—labour market enhancement programs such as job information and counselling services, employment support measures like post-employment counselling, child care, income transfers, wage subsidies, and employment training.[92] The second calls for the introduction of affirmative action measures, in addition to any other program or service, to be made available to the five designated groups it is concerned with.[93] The third entails state support for employment development programs, particularly for workers in remote areas.[94] With reference to affirmative action, the Task Force suggests that the most effective strategy to overcome the barriers encountered by designated groups is positive action by the state, both with respect to entry or re-entry as well as to advancement and promotion.[95] More specifically, it calls for legislation to encourage women into non-traditional occupations with growing demand, as opposed to streaming them into their traditional clerical occupations.[96] In addition, it calls for programs and services to assist women to recapture labour force experience lost because of child-bearing responsibilities, as well as flexible work arrangements and child care in order to take into account those responsibilities.[97] On the other hand, the Task Force also acknowledges that the introduction of mandatory programs could well entail significant legal and administrative costs, the loss of competitiveness for firms subject to such measures vis-à-vis those who are not, and the loss of productivity associated with the imposition of inefficient quotas.[98]

Likewise, the ideas advanced by the Bird Commission are reflected directly in the mandate and work of the Royal Commission on Equality in Employment, from the crafting of its mandate to the selection of Justice Rosalie Abella as sole commissioner, who was chosen because of her involvement in the feminist and human rights movements and her interest in the concerns of the disabled.[99] In keeping with these ideas, the lengthy Order-in-Council which created the Abella Commission makes only one mid-paragraph reference to economic efficiency but emphasizes instead issues of equality or workplace discrimination as the rationale for its creation. A similar predisposition is evident in the importance Justice Abella later attached to legal, jurisdictional, constitutional, demographic, social or administrative considerations, as opposed to economic efficiency issues. The evidence for this lies in the fact that no more than six of the thirty-nine studies she commissioned dealt with the economic issues associated with workplace affirmative action and in the fact that all of the twenty-seven of these studies published by the Commission all support the assumption that labour markets in Canada discriminated against its designated groups. A study which indicated that "data are not available as to whether observed employment patterns may have developed because of discrimination or because of personal choice and preferences or for other reasons...."[100] was never published by the Commission.

The Establishment of the Commission of Enquiry on Equality in Employment

On June 27, 1983, the Honourable Lloyd Axworthy, the Minister of Employment and Immigration, announced the establishment of [illegible] Commission of Enquiry on Equality in Employment and the appointment of Ontario Family Court Justice Rosalie Abella of Toronto as its sole commissioner.[101] Mr. Axworthy's announcement, in line with the ideas advanced by the Bird Commission, indicated that the purpose of the Abella Commission was to "examine and report on ways to assist women, Native people, disabled individuals and visible minorities to compete on an equal basis for employment opportunities."[102] Here, he also emphasized that the growth of the Canadian economy depended on the non-discriminatory participation of all Canadians in the labour market.[103] In addition, he noted that while the

Commission would focus on the employment practices of eleven named large federal Crown corporations,[104] it would also be required to consult with individuals and groups representing women, native people, disabled persons, visible minorities, and others, such as employer and employee representatives.[105]

The Order-in-Council No. PC1983-1924 of June 24, 1983 which authorized the establishment of the Commission,[106] sets out its mandate and the reasons for its creation as follows:

> Whereas analysis contained in the reports of the Special Parliamentary Committee on the Disabled, The Parliamentary Task Force on Employment Opportunities for the 80's and the Labour Market Development Task Force established by the Minister of Employment and Immigration indicate the need for further government action to encourage, in all sectors of economic activity, the hiring, training, and promotion of women, native people, disabled persons, and visible minorities;
>
> Whereas measures taken by employers to increase the employability of women, native people, disabled persons and visible minorities have not yet resulted in nearly enough change in the employment practices which have the unintended effect of screening a disproportionate number of those persons out of opportunities for hiring and promotion;
>
> And whereas the Government of Canada recognizes that it has an obligation to provide leadership in ensuring the equitable and rational management of human resources within its organizations;
>
> it is desirable that an inquiry be made into the opportunities for employment of women, native people, disabled persons and visible minorities in certain crown corporations wholly owned by the Government of Canada.
>
> The Committee, therefore, on the recommendation of the Minister of Employment and Immigration advises that, pursuant to Part I of the Inquiries Act, a Commission be issued appointing Judge Rosalie S. Abella of the Ontario Provincial Court (Family Division) a Commissioner to inquire into the most efficient, effective and equitable means of promoting employment opportunities, eliminating systemic

> discrimination and assisting all individuals to compete for employment opportunities on an equal basis....[107]

The full text of the Commission's Terms of Reference is reproduced in Appendix A.

Specifically, the Commission was directed to examine the employment practices of the eleven Crown corporations specified in its terms of reference. It was also directed to suggest remedies for any deficiencies in those employment practices, including recommendations as to whether such remedies should be allowed to be voluntary or if they ought to be imposed by government. As well, it was directed to obtain the views of management and employee representatives of the named Crown corporations, of groups representing women, native people, disabled persons, and visible minorities, and those of "any other interested individual or group"[108] on these matters. It should be noted here that, as will be evident later, in carrying out her tasks as commissioner, Justice Abella certainly stretched, and indeed seems to have exceeded the boundaries of her terms of reference. This is acknowledged by Timpson, who notes that "Abella broadened the spectrum of her inquiry"[109] to include all of the private sector. This blurring of boundaries by Justice Abella was later criticized by the Fraser Institute.[110] This was also implicitly (if ambiguously) corroborated by Justice Abella herself, who noted that she treated the reference in her mandate to deal with certain federal crown corporations as "illustrative models"[111] and not as a limitation on her ability to pursue her own agenda. In any event, the Liberal administrations of Pierre Trudeau and John Turner did not move to limit the scope of her activities and the Progressive Conservative government of Brian Mulroney accepted her contention that workplace affirmative action legislation should include private sector employers.

Summation

The data presented above indicate that, like leitmotifs in a symphony (sometimes emphasized, and at other times blending almost imperceptibly into other themes), the workplace equality ideas for the benefit of women first advanced by the Bird Report recurred repeatedly in later studies and reports and were then extended to include native people, disabled persons, members of visible minorities, youth, and older workers, as well as women. However, not every one of these studies identified the same groups as being victims of workplace discrimination [112] nor agreed on whether discrimination was the sole cause of the difficulties members of such groups faced on the job.

By deciding to establish the Abella Commission and by crafting its terms of reference in the manner it did, as well as extending its mandate as requested, the federal government signalled that it had accepted as valid the substantive ideas which flowed from the work of the Bird Commission, as later modified by a number of other reports and studies to include native people, disabled persons, and members of visible minorities in addition to women, but not, it should be noted, youths and older workers. That is, it signified that the government was convinced that the premises advanced by the Bird Commission regarding the experience of women in the labour market were sound and grounds for state intervention in the those markets on behalf of not only women but also of native people, disabled persons, and members of visible minorities as well. These premises were that labour markets systematically discriminated against these target groups, that it was the experience of the group—not that of individuals—that determined the existence of workplace discrimination, that society had an obligation to provide special measures to assist women to function successfully in the workplace, that labour markets were ineffective in ensuring equality on the job, and that state action was the most effective remedy available to correct discrimination against members of designated groups in the workplace. The Commission's Terms of Reference also indicate that the Abella Commission's primary objective was not the kind of fact-finding mission given the Bird Commission. Rather what the government wanted from the Abella Commission was implementation ideas for a policy direction already decided on. Finally, it also illustrates that the government had decided to give voice to virtually every individual or non-traditional pressure group with respect to employment equity, something royal commissions had seldom been required to do to such an extent up to that time.

This is not to suggest that the ideas advanced by the Bird Commission were the only sources of inspiration for what followed. Rather, it appears that these ideas were also part of, and consistent with, a larger post-materialist discourse emerging in Canada at the time. This discourse emphasized notions of quality of life and belonging, including such things as women's rights, environmental protection, the introduction of multiculturalism as a public policy, measures to end racial discrimination, and consumer rights, amongst others.[113] That discourse stressed the prevalence of discrimination in the workplace against whole communities of individuals and challenged the customs and practices of employers which made this possible. It also advanced the notion that employers were to be obligated by the state to provide special measures to rectify the injustices inflicted by the labour market on members of designated groups, however defined. Moreover, that discourse was essentially anti-materialist in the sense that it assumed that labour markets were intrinsically ineffective in ensuring equality in the workplace and in effect advocated a redistribution of societal benefits, as opposed to the materialist concerns with efficiency and economic growth. Paradoxically, though, that discourse also advocated one important element of the materialist perspective: a preoccupation with security in the form of a state guarantee of equality on the job.

The reports and studies examined here suggest that these ideas about the condition of women in the workplace in Canada and what ought to be done to ameliorate it served in large measure to inform the work of later studies which, in turn, persuaded federal politicians and their policy-making public servants to introduce workplace affirmative action legislation in Canada.[114] Influential policy ideas are not, however, successful solely on their intrinsic merits. They also require external support and an institutional regime which permits them to flourish.[115] In the case of employment equity in Canada, one important element of support was the presence of a proximate and vigorous example in the tradition of workplace affirmative action in the United States, launched by President Kennedy in 1961 and incorporated into the Civil Rights Act of 1964.[116] A second and perhaps more important support element was the emergence in Canada of an alliance of post-materialist minded pressure groups and reformist administrators intent on promoting change in the workplace in a manner reminiscent of the experience of the United States.[117] It was the assertiveness of the many pressure groups which actively participated in the work of these commissions and task forces that created the shift in influence (if not power) away from the concerns of the materialist-minded business, organized labour, and agricultural interests to those of post-materialist oriented pressure groups representing women, native people, disabled persons, and other interests, as well as the presence of an influential minister in Cabinet, which moved the government to establish this kind of public policy in Canada. Lastly, both the generation of those ideas and the capacity of these pressure groups to move the issue of employment equity into the policy-making arena ultimately depended upon the existence in Canada of a set of liberal democratic political institutions, relative wealth, and social stability, all of which not only allowed for the active participation of those pressure groups in the formulation of public policy but also informed the issues of importance to them. As Bradford reminds us, it is ideas which drive policy innovation and it is as a result of those ideas–supported by interests and channelled into particular directions by society's mores and institutions–that change occurs.[118]

Not all policy ideas and recommendations advanced by royal commissions are acted upon by governments.[119] Some are adopted only long after the commissions' reports are submitted to the government or are modified in their implementation.[120] Thus, certain of the recommendations and ideas proposed by the Bird Commission (such as the establishment of the National Action Council on the Status of Women) were acted on reasonably quickly by the government. On the other hand, its recommendations with respect to workplace affirmative action on behalf of women took more than a decade to bear fruit. Still others have been almost entirely ignored, such as its recommendation that the government set up a national day care program funded jointly by the federal and provincial governments.[121] Nonetheless, it is clear that the Bird Commission ideas were instrumental in influencing the work of later Parliamentary Committees, studies, and administrative task forces which dealt with employment equity issues in the following decade, particularly those parts of its report which dealt with workplace affirmative action. In that sense, its can be deemed to have succeeded in influencing change.

The work of advancing ideas about designing workplace affirmative action on behalf of women first advanced by the Bird Commission and of expanding them to include other groups deemed to be disadvantaged in the labour market was largely completed by 1983. What was then needed for these ideas to bear legislative fruit was to gather together the various strands of thought developed over the previous decade into a coherent and systematic plan of action. That was the task given to the Royal Commission on Equality in Employment. The following two chapters examine the views and positions of both those who supported as well as those who opposed the introduction of workplace affirmative action in Canada.

1. Report of the Royal Commission on the Status of Women in Canada, (Ottawa: Information Canada, 1970).

   Henceforth, this Royal Commission will be referred to as the Bird Commission, after its Chair, Florence Bird.

2. Henceforth, this Commission will be referred to as the Abella Commission, after the sole commissioner, Justice Rosalie Silberman Abella.

3. Annis May Timpson, Driven Apart: Women's Employment Equality and Child Care in Canadian Public Policy, (Vancouver: UBCPress, 2001), p. 25.

4. Timpson, p. 20.

5. Timpson, p. 21.

6. Ibid.

7. Ronald Inglehart, Culture Shift in Advanced Industrial Society, (Princeton, NJ: Princeton University Press, 1990), p. 7.

8. Bird Commission, p. vii.

9. The reports utilized are: Opportunity for Choice: A goal for women in Canada, ed., Gail C.A. Cook, Statistics Canada in Association with the C.D. Howe Research Institute, (Ottawa: Information Canada, 1976); Labour Markets and Sex Differences in Canadian Incomes, (Ottawa: Economic Council of Canada, 1979); The changing Economic Status of Women, Economic Council of Canada, (Ottawa: Minister of Supply and Services Canada, 1984); In short supply: Jobs and Skills in the 1980's, (Ottawa: Minister of Supply and Services Canada, 1982); Work for Tomorrow: Employment Opportunities for the 1980's, (Ottawa: House of Commons, 1981); Labour Market Development in the 1980's, (Ottawa: Employment and Immigration Canada, July, 1981); Obstacles: The Report of the Special Committee on the Disabled and the Handicapped, (Ottawa: House of Commons, February, 1981); and Manpower Policy: Equity and Management, (Ottawa: The Canadian Council on Social Development, 1975).

10. This idea is systematically developed by William A. Niskanen Jr., Bureaucracy and Representative Government, (Chicago: Aldine Atherton, 1971). For a Canadian context to the issue of bureaucratic expansionist proclivities, particularly at the federal level, see also Annis May Timpson, Driven Apart: Women's Employment Equality and Child Care in Canadian Public Policy, (Vancouver: UBC Press, 2001), p. 56; Nicole Morgan, Implosion: an Analysis of the Growth of the Federal Public Service in Canada (1945-1985), (Montreal: The Institute for Research on Public Policy, 1986), pp. 120-127; and specifically with respect to the introduction

of workplace affirmative action programs, see Labour Market Development in the 1980s, (Ottawa: Minister of Supply and Services Canada, 1981), pp. 110-111.

11. Bird Commission, (Ottawa: Information Canada, 1970), p. vii.

12. Bird Commission, pp. vii-viii.

13. Bird Commission, p. xii.

14. Bird Commission, See Chap. 2, pars. 5, 6, 7, 8; p. 20 ; par. 452, p. 127; par. 454, p. 128; par. 499, pp. 138-139; and par. 567, p. 154.

15. Bird Commission, See Chart 2, p. 62; Table 7, p. 63; par. 233, pp. 73-75; Table 10, p. 74; and par. 234, p. 75; amongst others.

16. Bird Commission, See Chap. 2, par 342, p. 100; par 406, pp. 113-114; par 422, p. 121; par 427, pp. 122-123; par 460, p. 129; par. 502, p. 139; and par 506, p. 140.

17. Bird Commission, See Chap. 2, par. 252, p. 80.

18. Bird Commission, See Chap. 2, par. 236, p. 75; pars. 333-336, pp. 98-99; par. 296, pp. 112-113; Chap. 10, pars. 3-4, p. 388; par. 7, p. 389.

19. Gail C.A. Cook, "Opportunity for Choice: A Criterion," in Opportunity for Choice: A goal for women in Canada, ed., Gail C.A. Cook, Statistics Canada in Association with the C.D. Howe Research Institute, (Ottawa: Information Canada, 1976), pp. 2-3.

20. Cook, p. 8.

21. Cook, p. 3.

22. Ibid.

23. Morley Gunderson, "Work Patterns," in Opportunity for Choice: A goal for women in Canada, ed., Gail C.A. Cook, Statistics Canada in Association with the C.D. Howe Institute, (Ottawa: Information Canada, 1976), pp. 119-120.

24. Gail C. A. Cook and Mary Eberts, "Policies Affecting work," in Opportunity for Choice: a Goal for Women in Canada, ed., Gail C. A. Cook, Statistics Canada in Association with the C.D. Howe Research Institute, (Ottawa: Information Canada, 1976), p. 144.

25. Ibid.

26. Cook and Eberts, p. 173.

27. Monica Boyd and Elizabeth Humphreys, Labour Markets and Sex Differences in Canadian Incomes, (Ottawa: Economic Council of Canada, 1979), p. 1.

28. Boyd and Humphreys, p.31.

29. Ibid.

30. Boyd and Humphreys, p. 35.

31. Jac-André Boulet and Laval Lavallée, The changing Economic Status of Women, Economic Council of Canada, (Ottawa: Minister of Supply and Services Canada, 1984), p. 2.

32. Boulet and Lavallée, pp. 17-18.

33. Boulet and Lavallée, p. 42.

34. Boulet and Lavallée, p. 46.

35. Ibid.

36. Economic Council of Canada, In short supply: Jobs and Skills in the 1980's, (Ottawa: Minister of Supply and Services Canada, 1982), p. 55.

37. In Short Supply, p. 63.

38. Work for Tomorrow: Employment Opportunities for the 1980's, (Ottawa: House of Commons, 1981), p. 33.

39. Work for Tomorrow, p. 35.

40. Labour Market Development in the 1980's, (Ottawa: Employment and Immigration Canada, July, 1981), p. 92.

Hereafter, this will be referred to as the Dodge Report, after the senior public servant in charge of preparing the report.

41. Ibid.

42. See particularly Employment Systems Review Guide, (Ottawa: Minister of Supply and Services, 1991), pp. 1-3, and Employment Equity: A Guide for Employers, (Ottawa: Employment and Immigration Canada, n.d.).

43. Dodge Report, p. 94.

44. Dodge Report, p. 95.

45. Dodge Report, pp. 95-96.

46. Bird Commission, pp. 56-81.

47. Boyd and Humphreys, p.31..

48. Dodge Report, p. 91. The designated groups featured in this report are, women, native people, disabled persons, youths, and older workers, but not, it should be noted, members of visible minorities.

49. Dodge Report, p. 92.

50. For an elaboration on this view, see: Thomas Sowell, "Weber and Bakke, and the Presuppositions of 'Affirmative Action,'" pp. 37-63, and Walter Williams, "On Discrimination, Racial Income Differentials, and Affirmative Action," pp.69-99, both in Discrimination, Affirmative Action, and Equal Opportunity: An Economic and Social Perspective, eds, W.E. Block and M.A. Walker, (Vancouver: The Fraser Institute, 1982).

51. Obstacles: The Report of the Special Committee on the Disabled and the Handicapped, (Ottawa: House of Commons, February, 1981), p. 1.

52. Obstacles, p. 32.

53. Obstacles, p. 33.

54. Obstacles, p. 34.

55. Obstacles, p. 50.

56. Work for Tomorrow: Employment Opportunities for the 1980's, (Ottawa: House of Commons, 1981), p. 127.

57. Work for Tomorrow, p. 10.

58. Work for Tomorrow, p. 16.

59. Work for Tomorrow, p. 19.

60. Work for Tomorrow, p. 22.

61. Manpower Policy: Equity and Management, (Ottawa: The Canadian Council on Social Development, 1975), par. 50, p. 32.

62. Manpower Policy, par. 35, pp. 22-23.

63. Manpower Policy, par. 53, p. 34, and par. 88, p. 45.

64. Manpower Policy, par. 2, p. 1.

65. Cook, p. 2.

66. In Short Supply, p. 1.

67. In Short Supply, pp. 11.

68. Work for Tomorrow, p. 33.

69. Work for Tomorrow, p. 102.

70. Dodge Report, p. 91.

71. Dodge Report, p. 94.

72. Dodge Report, p. 99.

73. Manpower Policy: Equity and Management, (Ottawa: The Canadian Council on Social Development, par. 19, p. 11.

74. Cook, p. 11.

75. Cook, p. 9.

76. Cook and Eberts, pp. 182-183.

77. Ibid.

78. Ibid.

79. Cook and Eberts, pp. 183-184.

80. Boyd and Humphreys, 54-55.

81. Ibid.

82. Obstacles, p. 31.

83. Obstacles, p. 32.

84. Obstacles, p. 38.

85. Obstacles, p. 35.

86. Ibid.

87. Work for Tomorrow, p.19.

88. Work for Tomorrow, p. 13.

89. Dodge Report, pp. 91-110.

90. Dodge Report, p. 91.

91. Dodge Report, p. 107.

92. Dodge Report, pp. 102-107.

93. Dodge Report, pp. 107-109.

94. Dodge Report, p. 109.

95. Dodge Report, pp. 92-93.

96. Dodge Report, p. 95.

97. Ibid.

98. Ibid.

99. Timpson, p. 101.

100. National Archives of Canada, RG33(84-85/395), Vol. 19, File Jenny Podoluk, "Profile of Canadian Labour Market, p. 2.

101. Lloyd Axworthy, Minister, Department of Employment and Immigration Press Release, (Ottawa: Employment and Immigration, June 27, 1983).

102. Ibid.

103. Ibid. This is the only reference to an economic (i.e. materialist) consideration in creating the Commission's Terms of Reference. Much more emphasis was given to creating equality of opportunity for designated group members: in a sense, redistributing wealth rather than creating it.

104. The federal Crown Corporations named in this Press Release were: Petro Canada, Air Canada, Canadian National Railway Company, Canada Housing and Mortgage Corporation, Canada Post Corporation, Canadian Broadcasting Corporation, Atomic Energy of Canada Limited, Export Development Corporation, Teleglobe Canada, DeHavilland Aircraft of Canada Limited, and Federal Business

Development Bank.

105. Ibid.

106. The full text of the Order-in-Council authorizing the creation of the Commission on Employment Equity will be found in Appendix A.

107. National Archives of Canada, RG33-133, Vol. 23, File "Commission Kit."

108. Ibid.

109. Timpson, p. 103.

110. Walter Block and Michael A. Walker, On Employment Equity: A Critique of the Abella Commission Report, (Vancouver: The Fraser Institute, 1985), pp.13-15.

111. Report of the Commission on Equality in Employment, Justice Rosalie Silberman Abella, Commissioner, (Ottawa: Minister of Supply and Services Canada, 1984), p. v.

Hereafter, this will be referred to as the Abella Report.

112. For example, the Dodge Report identifies women, native people, disabled persons, youth, and older workers as suffering from discrimination in the workplace but ignores the difficulties often encountered by members of visible minorities. See particularly pp. 93-101.

113. Neil Nevitte, The Decline of Deference: Canadian Value Change in Cross-cultural Perspective, (Peterborough, ON: Broadview Press, 1996), p. 4.

114. For a brief account of the considerations that motivated the federal government of the day to establish the Abella Commission, see Timpson, pp. 99-101.

115. Bradford, p. 15.

116. Steven M. Cahn, “Introduction,” in The Affirmative Action Debate, ed., Steven M. Cahn, (New York: Routledge, 1995), p. xi.

117. Theda Skocpol, “The Origins of Social Policy in the United States: A Polity-Centered Analysis,” in The Dynamics of American Politics: Approaches and Interpretations, (Boulder, CO: Westview Press, 1994), p. 203. Here Skocpol is referring only to women’s organizations but the notion holds true for all pressure groups.

For a Canadian example of the symbiotic relationship between bureaucracies and pressure group elites, see Leslie Pal, Interests of State: The Politics of Language, Multiculturalism and Feminism in Canada, (Montreal & Kingston: McGill-Queen's University Press, 1993), p. 51.

118. Bradford, p. 15.

119. John C. Courtney, "In Defence of Royal Commissions," in Canadian Publiic Administration, Vol. 12, No. 2, 1969, p. 201.

120. C. E. S. Walls, "Royal Commissions–Their Influence on Public Policy," in Canadian Public Administration, Vol. 12, No. 3, 1969, p. 366.

121. The failure of the federal government to act upon the Bird Commission's recommendations in support of state directed child care is explored in detail by Annis May Timpson, Driven Apart: Women's Employment Equality and Child Care in Canadian Public Policy, (Vancouver: UBC Press, 2001).

Chapter Three

INTERESTS AT WORK

Introduction

Despite their potential to affect change, the ideas advanced by the Bird Commission and others sketched out in Chapter Two to change workplace conditions in Canada would likely have been stillborn had they not been consistent with, or at least exhibited some basis in, the social norms and mores of Canadian society at the time. However, what else was required to promote change was the support of influential interests and institutional predispositions favourable to those ideas. This chapter and the following one review and assess that nature of the formal responses to Justice Abella's calls for input into the work of her Commission. Specifically, it explores the responses to her request for briefs by groups representing women, native people, disabled persons, and members of visible minorities, which provided the rationale (or the compelling reason for change) for the introduction of the radical public policy change that is the Employment Equity Act. These submissions represent their often differing understanding of the notion of workplace affirmative action but taken together serve, in part at least, to explain the interventionist nature of the Abella Commission's recommendations, which will be examined in detail in Chapter Five. The briefs submitted by organized labour and employer associations, whose interests were perceived to be threatened by the imposition of workplace affirmative action are analyzed in the following chapter.

Part of the consultation process engaged in by the Abella Commission was Justice Abella's August, 1982 request for written briefs.[1] The objective here is to describe in detail the content of the responses to the Commission (now held by the National Archives of Canada) to illustrate the positions taken by groups representing women, native people, disabled persons, and members of visible minorities on the question of employment equity. The data presented illustrate the diversity of the understanding those submitting briefs about the causes of discrimination in the workplace brought to the process. On the other hand, they also demonstrate the virtually unanimous agreement by these organizations about the effect of this perceived discrimination on those that they represented as well as on the almost total consensus amongst them about the remedy required to redress it: legislated workplace affirmative action. The ideas that labour markets were ineffective mechanisms for ensuring equality in the workplace and that the only effective remedy for this was state intervention in those markets first articulated by the Bird Commission[2] in 1970, as interpreted by Justice Abella, had found their advocates.

Given the requirement to consult with the wide variety of individuals and groups which formed part of her mandate, the short times frames available to her, and the complexity of the issues involved, Justice Abella adopted a variety of methods to obtain the input she needed to complete her report. First, she wrote to nearly a thousand groups and individuals inviting feedback. Second, she advertised the Commission's objectives in newspapers, journals, and magazines.[3] Third, she wrote to selected ministers in all provinces and territories requesting information about their legislation and programs for members of the target groups identified in the Order-in-Council which established her Commission.[4] She also asked a number of foreign countries for information on their workplace affirmative action legislation and programs. In addition, Justice Abella held a series of meetings with interested groups and individuals from one end of Canada to the other. She also organized a think tank in Toronto to discuss employment equity issues and commissioned a number of research studies to explore some of the demographic, legal, constitutional, and theoretical aspects of employment equity as well as the practical issues involved in their implementation. Unfortunately, the records of the Commission in the National Archives provide no information at all on the substance of the discussion with the more than six hundred groups and individuals that Justice Abella met with during the course of her work nor of the discussions which took place at the think tank she organized in Toronto. Also, the records are incomplete with respect to the responses of governments, both provincial and foreign. Consequently, only the views expressed and positions taken as recorded in the formal briefs presented to the Commission will be dealt with here.

The briefs submitted to the Abella Commission by a variety of organizations offer the most reliable record of their positions on workplace affirmative action at that time. A count in Appendix B of the Abella Report indicates that a total of two hundred ninety-four such briefs were received. Table 4.1 outlines the classification, by groups, of these submissions, as categorized and ordered in Appendix B of that report.

Table 4.1

Breakout of Submissions by Group

Type of Group	Number of Groups	Percentage Distribution
Women	64	21.8%
Native People	42	14.3%
Disabled Persons	61	20.8%
Visible Minorities	55	18.7%
Labour	17	5.8%
Business and Crown Corporations *	14	4.7%

Government Bodies	20	6.8%
General	21	7.1%
Totals	**294**	**100.0%**

- **Like business enterprises, the Crown Corporations who responded to Justice Abella's requests for information on their hiring and promotion practices did so in their capacity as employers and are therefore included here as one item.**

Table 4.1 includes all groups, employers, individuals, or government institutions which submitted briefs to the Abella Commission. What is immediately striking about this data is the preponderance of submissions from groups representing women, native people, disabled persons, and members of visible minorities in Canada. It indicates that two hundred twenty-two of the two hundred ninety-four briefs submitted (75.5 per cent) originated with these groups. This is evidence of the limited participation by labour, business, and governmental organizations in that process. Taken individually, none of these latter groups exceeds 6.8 per cent of the total and together they account for no more than 17.3 per cent (slightly less than one in six) of all submissions. The remaining roughly seven per cent of the submissions (categorized as 'General') represent the views of an extremely diverse group of individuals and organizations which could not be classified in any other way.

An analysis of the submissions to the Abella Commission deposited with the National Archives of Canada suggests that not every group representing women, native people, disabled persons, and members of visible minorities viewed the issue of employment equity in exactly the same manner. In this section, the submissions of a representative sample of each of these categories are examined in the order in which they appear in Appendix B of the Abella Report.

Women

a. General

As indicated in Table 4.1, groups representing women's interests submitted the greatest number of briefs to the Abella Commission. Both the length and content of these submissions varied widely. Some, like the briefs from the Federation of Women Teachers' Associations of Ontario, or the Federal PC Women's Caucus of Calgary, ran to more than twenty pages and featured coherently developed arguments dealing specifically with issues identified by Justice Abella in her second call for submissions. Others were much shorter—sometimes no more than a page in length—and in other instances were no more than copies of briefs presented to other bodies, parts of which expressed the group's views on issues such as affirmative action, maternity leave, equal pay for work of equal value, pension benefits, and the like.

b. Themes

Although not all submissions by groups representing women's interests reflected a consistent perspective, they nearly all focussed on four interrelated themes which reflected to a large extent the findings of the Bird Report. The first, universally held, was that women fared badly in the labour market when compared to men. This included the notion that a lack of statistical parity between men and women in any sphere of employment constituted evidence of discrimination of some kind against women. The second was that state action was necessary to rectify the imbalance. The third was that the establishment of a comprehensive administrative system was necessary to ensure the success of any remedial measure. The fourth was that women's experience in the workplace reflected a wider social exclusion of women from positions of power and influence.

Women Fared Badly in the Labour Market

First, despite a sometimes wide divergence of opinion about what to do about it, the briefs presented by women's groups expressed a unanimous consensus that women were not treated equitably in the labour market. Sometimes, as in the case of the submissions by the National Action Committee on the Status of Women,[5] the Agricultural Institute of Canada,[6] le Réseau d'action et d'information pour les femmes,[7] and the Federation of Women Teachers' Associations of Ontario,[8] amongst others, this notion is explicitly articulated. For example, the brief of the National Action Committee on the Status of Women cited the case of the

Canadian National Railways where, it claimed, women comprised only six per cent of CN's total workforce. A similar argument was made by the Federation of Women Teachers' Associations of Ontario, which asserted that in 1982-83 only 179 out of 1,107 vice-principals in elementary schools were women and that only 197 out of 2,457 principals in that system were women. It also asserted that at the same time only 77 out of 834 vice-principals in the secondary school system were women, and that only 23 out of 586 principals were women.[9] In the case of other submissions, the notion that women were excluded from many occupations was simply taken as a given. Furthermore, the absence of statistical parity between males and females in the labour market was universally accepted as evidence of discrimination against women.

The Need for State Action

Second, there was virtually universal consensus that the lack of parity between men and women in most occupations could not be corrected without state action. However, beyond general agreement that this was an issue for governments to act upon, there was a wide divergence of opinion about exactly what should be done. Although there existed a certain degree of overlap in the positions taken in these briefs, they can be categorized into four broad types: those which advocated legislated mandatory affirmative action measures, those which supported some kind of limited mandatory action programs, those which proposed voluntary affirmative action measures, and those opposed to affirmative action programs of any kind. It should also be noted here that not all submissions addressed the issue of mandatory as opposed to voluntary affirmative action programs. As will be indicated below, some briefs favoured both mandatory and voluntary measures, depending on the status of the employer. But where it has been possible to determine this, in thirty-six of the sixty-four briefs submitted to the Abella Commission by groups representing women, twenty-seven favoured mandatory affirmative action to enhance the role of women in the labour market and only nine opposed it.

Amongst the groups which advocated mandatory affirmative action measures one finds amongst others, the briefs of the National Action Committee on the Status of Women, the Federation of Women Teachers' Associations of Ontario, the National Women's Liberal Commission,[10] and the Ottawa Valley Chapter of Women in Science and Engineering.[11] One typical example was that of the National Action Committee on the Status of Women, which recommended mandatory, state-directed workplace affirmative action measures on behalf of women. It also advocated legislation to establish equal pay for work of equal value, state funded daycare, and laws requiring proportional pay and benefits for part-time workers. The Status of Women Committee's arguments were patterned after American law and administrative practice at the time. That is, the Status of Women Committee viewed the issue in terms of violated rights, thus the need for legislative remedies. Curiously, given its emphasis on violated rights and its attendant legal remedies, the Committee did not recommend recourse to the courts to correct the injustices to which it asserted women were subjected. Rather, it placed its faith in administrative tribunals, such as the Canadian Human Rights Commission. Although the Action Committee's brief is silent on the matter, the reason for this approach was likely that it viewed that kind of tribunal as being more accessible and supportive of complainants against employers than the courts were apt to be.

In like manner, the submission of the Federation of Women Teachers' Associations of Ontario advocated "mandatory affirmative action"[12] measures as the only certain way to improve the position of women at work, on the basis that voluntary measures had been tried and had failed to achieve that objective. In addition, that brief advanced the argument that this kind of legislated direction would improve morale in the workplace, reduce turnover and absenteeism, strengthen work commitment, increase productivity, and reduce costs. The submission of the National Women's Liberal Commission also advocated the establishment of legislated mandatory affirmative action programs with strong enforcement and monitoring procedures as well as contract compliance for enterprises doing business with governments. This brief was the only one that specifically summarily dismissed tax and other economic incentives to encourage employers to implement affirmative action measures on behalf of women, characterizing them as "abhorrent." The Ottawa Valley Chapter of Women in Science and Engineering also advocated state-directed mandatory affirmative action on behalf of women as well as rejecting out of hand the use of tax or other economic incentives to encourage employers to hire, train, and promote women. Other examples could, of course, be presented, but the foregoing illustrate the perspectives underlying the approach to improving the condition of women in the workplace held by those advocating vigorous state intervention in the labour market to achieve that objective.

On the other hand, a number of submissions advocated the introduction of some form of limited mandatory affirmative action in favour of women in the workplace. In this group one finds, amongst others, the briefs of le Réseau d'action et d'information pour les femmes, of the Canadian Psychological Association, and of the Federal PC Women's Caucus of Calgary.[13] For example, the brief of le Réseau d'action et d'information pour les femmes recommended that mandatory affirmative action measures be required only of governments and enterprises coming under federal jurisdiction which employed more than a thousand workers. It also advocated contract compliance measures incorporating the same conditions as those proposed for governments for firms not subject to federal laws but who wished to supply the government with goods or services. In many ways, the recommendations of this group were more radical than virtually all others in those instances where they considered mandatory affirmative action as appropriate. For example, its brief advocated the establishment of quotas for the hiring, training, and promotion of women based strictly on the percentage of males and females employed. While acknowledging that voluntary affirmative action programs had failed to achieve acceptable results and not eradicated the barriers faced by women in the labour market with respect to hiring, training and promotion opportunities, the Canadian Psychological Association nevertheless recommended that mandatory affirmative action be limited to government bodies and Crown corporations. For private sector enterprises, it advocated the use of tax incentives and other forms of state support to encourage such employers to adopt voluntary affirmative action programs in favour or women. While asserting that affirmative action measures could create injustices for individuals not protected under such measures and although acknowledging that such measures could be harmful to competent members of minorities, it nevertheless supported the need for affirmative action programs which provided individuals with needed information and skills to be hired or promoted as well as those which established goals and timetables for hiring women. What it opposed were programs which mandated quotas of any kind.

A third group of briefs urged the establishment of voluntary affirmative action programs to promote equality of opportunity for women in the workplace. In adopting this position, such groups readily acknowledged that women generally fared badly in the labour market when compared to men. However, they saw voluntary measures as a more effective strategy in the long run. The briefs of the Canadian Association of Women Executives[14] and the Agricultural Institute of Canada fall into this category. In terms of specific proposals, the Canadian Association of Women Executives recommended the establishment of what it termed collaborative relationships and programs designed to ensure that women had the same access to managerial and executive positions as men. More specifically, it called for the Prime Minister to convene meetings between senior corporate leaders and their counterparts in the public sector to establish a consensus on developing effective voluntary affirmative action programs for women. It also called for the creation of a standing advisory body of top corporate executives and senior public servants to advise business and government on the most effective ways to set up and operate voluntary affirmative action programs. This approach relied heavily on the assumption that, once the head of a public or private body became committed to workplace affirmative action, change would follow. While acknowledging that women were generally not well represented in agricultural occupations, the brief of the Agricultural Institute of Canada did contradict the position taken by, for example, the National Action Committee on the Status of Women, the Federation of Women Teachers' Associations of Ontario, and the National Women's Liberal Commission that voluntary programs had no effect by asserting that such measures had already resulted in an increase in the hiring of women in the agricultural industry by both governments and the private sector.

Of the briefs opposed to mandatory affirmative action, that of the PC Women's Caucus of Peel-Halton[15] represented the views of those groups which also adopted that position. For instance, it asserted flatly that governments "should not force employers to give women equal rights in the workforce" on the grounds that such legislation would, in turn, force employers to make hiring decisions calculated to satisfy the legislation rather than on strictly economic criteria. It also claimed that this kind of legislation would have the effect of mitigating against the most effective use of labour as well as carrying with it a "buried insult to the designated group" involved. Other briefs which also opposed the introduction of mandatory workplace affirmative action tended to take a much less major approach.

Administrative Structures and Functions

The briefs presented to the Abella Commission by women's groups also proposed that certain specific administrative or operational measures be adopted by employers to improve the condition of women in the workplace. These recommendations entailed a high level of systematic record keeping and administrative sophistication on the part of employers as well as a significant amount of state intervention in the labour market. For example, the briefs of the National Action Committee on the Status of Women, the Federation of Women Teachers' Associations of Ontario, the Ottawa Valley chapter of Women in Science and Engineering, and the Canadian Psychological Association all recommended variations on the theme that employers be obliged to provide state agents with planned goals for implementing affirmative action along with specific timetables for their implementation. In addition, they called for employers to be required to provide these agents with detailed statistical breakdowns of the composition of their staffs in order to facilitate the monitoring of compliance by employers to standards imposed by legislation. These proposals were later largely enshrined in legislation. The Canadian Psychological Association brief also recommended that employers develop what it termed "carefully defined job descriptions" as part of this process. The brief of the National Women's Liberal Commission advocated that state agencies be empowered to initiate action against employers even where no complaints of discrimination were forthcoming from employees and called for procedures which would ensure that, where one employee was found to have been discriminated against, the remedy ordered by a tribunal be made available to the whole class or group to which that individual belonged, whether or not others had been discriminated against. In a similar vein, the brief of the National Action Committee on the Status of Women recommended that complainants' legal and other costs be supported when a complaint of discrimination on the job was substantiated. However, it did not advocate that the costs borne by an enterprise defending itself against an unjustified complaint be similarly reimbursed. As well, the Federation of Women Teachers' Association of Ontario proposed that the data on the composition of employers' staffs and their plans for implementing affirmative action programs in their enterprises be made public. This proposal subsequently emerged as one of the recommendations of the Abella Commission[16] and later still became part of the Employment Equity Act.[17]

In addition, the briefs of the National Action Committee on the Status of Women, le Réseau d'action et d'information pour les femmes, the National Women's Liberal Commission and the Federation of Women Teachers' Associations of Ontario urged that the government establish contract compliance measures for firms doing business with the government. That is, that it require enterprises wishing to supply goods or services to the federal government, but who would otherwise remain outside its jurisdictional reach, to establish affirmative action programs identical to those subject to federal law. This too is now incorporated into the Employment Equity Act.[18] The brief of le Réseau d'action et d'information pour les femmes also advocated fining enterprises found guilty of discrimination as well as financial compensation for those discriminated against. In a radical departure for a group representing largely unionized workers, the Federation of Women Teachers' Associations of Ontario recommended that both management and unions sacrifice the principle of seniority (arguably the most sacrosanct core of trade union ideology) to workplace affirmative action, since in their view this represented the greater social good.

The Need to Change Traditions in the Workplace

Finally, although this notion was not necessarily articulated with great precision, a group of submissions, including those of le Réseau d'action et d'information pour les femmes, the Ottawa Valley Chapter of Women in Science and Engineering, the Federal PC Women's Caucus of Calgary, and the Federation of Women Teachers' Associations of Ontario called for the government to change traditions in the workplace, although precisely how this was to be achieved was not made clear. In the case of the briefs of the Federal PC Women's Caucus of Calgary and the Federation of Women Teachers' Associations of Ontario, the recommendation was aimed more at the educational system than at the workplace itself.

Native People

General

As indicated in Table 5.1, native peoples' groups submitted the smallest number of briefs to the Abella Commission of any of the designated groups identified in the Commission's terms of reference. Specifically, their forty-two briefs comprised 14.3 per cent of the total submissions presented for consideration by the Commission. As was the case with the submissions from women's groups, not all native group briefs followed the format established by the Commissioner for their responses. Moreover, many native group submissions were essentially a critique of all federal government programs and policies then in effect. For example, the submission by the The Pas Friendship Centre was taken up almost entirely with complaints directed against the local Canada Employment Centre.[19] Furthermore, other native group briefs, like that of the Grand Council of Crees from Quebec, emphasized issues like land claims, treaties, and the like, as opposed to specifically employment issues.[20]

Themes

Although the native group submissions varied considerably from one to another, and although they did not always agree on particular issues, they featured four related themes. These can be categorized as follows: first, an articulation of what can be termed as a sense of isolation or dissociation from the larger society; second, the resolve to control the programs or services affecting them; third, demands for public funding for native-controlled economic development as a way of enhancing employment opportunities for native people; and fourth, claims for public support for education and training to allow native people to compete successfully in the labour market.

Isolation and Dissociation

Although in many respects the briefs of native groups also took it as a given that native people faced unwarranted disadvantages in the workplace, there was one theme evident in the presentations by native groups which was uniquely their own. This was what might be termed a sense of isolation and dissociation from Canadian society and its polity. It was evident that native people did not consider themselves to be an integral part of the Canadian polity but rather as existing as an entity, or perhaps more precisely, entities, immersed in the larger Canadian matrix yet not integral parts of that matrix. Unlike the briefs of women and disabled persons groups, which tended to focus on the problems of individual women or disabled persons in the labour market, the briefs of native groups emphasized the dilemmas faced by the collectivity. For example, whereas the submissions of women's groups tended to take it for granted that their members formed an integral (if discriminated against) part of Canadian society, native group briefs tended to refer to their membership in such terms as "our people," "Native people," or "Indian people."[21] On another level but in similar fashion, they also referred to their members as Dene or Inuit.[22] And in yet another context, they referred to those they represented as home communities, first nations, or Indian governments.[23] This sentiment of dissociation was perhaps best expressed by the brief of the Association of Iroquois and Allied Indians, which declared that:

> [O]ur people have been continually ignored for consultation purposes towards constructive input with respect to our own needs and future aspirations.[24]

Native Control of Programs and Services

Flowing directly from the sense of dissociation from Canadian society expressed by native groups was a clearly articulated desire for native control over programs and services affecting them. Related to this was the determination to ensure not only the continuance but also the enhancement of their cultures and languages. Although presented in a variety of perspectives and emphasizing differing details, the thrust for native control fell into two broad categories: first, the recognition of first nation governing bodies or communities as equal partners in planning for and implementing services to native people; second the requirement that native people be directly involved in any decision-making process affecting them.

The notion that native governing bodies or communities be recognized as equal partners with government in the provision of services to natives is perhaps best expressed in the submission of the Tungavik Federation of Nunavut, which called for the wider society to:

> [R]ecognize government and Inuit as joint participants in the management of land and resources, the assessment of development impacts on the environment and the delivery of social programs.[25]

and a:

> [R]ecognition of Inuit participation in decision-making processes dealing with all aspects of our economic, social and cultural development [and a] delegation of power to the Inuit.[26]

This point of view was echoed and supported by the brief of the Union of Ontario Indians, which declared that:

> [P]rojects designed for implementation in our communities must, first, last, and always be an expression of each community's social, political, cultural, and economic goals.[27]

In like manner, the brief of the Association of Iroquois and Allied Indians notes that:

> [N]on-Indian governments must begin to acknowledge the fact that we as Indian people must do for ourselves the responsible tasks we perceive beneficial to our future, both individually and collectively.[28]

while the Dene Nation submission states that:

> Dene must become involved in determining what kind of employment and training programs are necessary and the

> communities must become involved in project planning for community based employment programs.[29]

and that of the Nishnawbe-Aski Nation, which adds:

> [T]he solutions to...economic problems lie in a renewed and changed relationship between our Nation and Canada.[30]

The foregoing illustrates that, unlike other groups presenting briefs to the Abella Commission, native groups were unwilling to leave the responsibility to establish measures to address the problems encountered by their members in the labour market to state agencies. This was in spite of the fact that, as will be indicated later in this part, they clearly wanted governments and society as a whole to end what they saw as discriminatory practices against them.

The second—and perhaps motivating—issue with respect to the position taken by native groups regarding native control of programs and services designed to enhance their position in the labour market was their determination to protect their languages and cultures. While it was true, as will be discussed later, that native groups laid great emphasis on the value of education and training to prepare their people to participate successfully in the labour market, it was equally true that they did not want to see this happen as the expense of the loss of their languages and traditions. For example, the brief from the BC Native Women's Society stressed that, "The maintenance and support of Indian culture is essential to Indian social well-being."[31] The submission of the Association of Iroquois and Allied Indians also stressed the importance native people attached to the maintenance of their tribal cultures. More specifically linked to employment, the brief of the Union of Ontario Indians declared that employers must respect the right of natives to pursue such traditional activities as hunting, fishing, or trapping when dealing with native employees. A similar position was put forward by the Nishnawbe-Aski Nation brief. More specifically still, the submission of the Tungavik Federation of Nunavut took the stand that job descriptions and selection criteria for workers in the eastern Arctic be structured so as to give significant weight to the ability to speak Inuktitut (the language of the Inuit) and to the possession of a knowledge of the social and cultural characteristics of Nunavut (the Inuit homeland). These perspectives were well supported by the brief of the Dene Nation, which declared that:

> [A]ttitudes toward employment must change to take into account the viability of traditional livelihoods and the fact that these livelihoods can co-exist with newer types of employment being offered in the north.

Public Funding for Native Economic Development

One area of concern peculiar to native groups was their expressed desire for state support for economic development in their communities. This included state funding for schools as well as for students required to leave their communities to take advantage of educational or training opportunities in metropolitan centres. One reason advanced in support of this proposal was, in the words of the submission of the Union of Ontario Indians, that:

> The major barrier to the employment of Indians is the lack of jobs on or in the vicinity of our communities.

There is merit to that assertion. For example, the Nishnawbe-Aski Nation brief indicates that only ten of the forty-three northern Ontario native bands it represented were accessible by road. The remainder could be reached only by air, and even these were often served with less than adequate landing fields. That brief also noted that the total population of these communities was only twenty thousand. That represented an average of less than five hundred people per community.

The notion that economic development assistance was a vital component of any initiative to provide employment for native people was echoed by the statement of the Union of Ontario Indians, which stated that:

> We believe that grass roots economic development is the ultimate solution to our employment problems.

This idea was always coupled with two related concerns. The first was that governments needed to commit the resources required to ensure the success of such economic development initiatives. The second was that such development be initiated and controlled by the natives themselves. For example, the Association of Iroquois and Allied Indians declared that federal and provincial government must provide native governments or their institutions all the resources necessary to expand existing employment opportunities and to develop new ones. They added that governments must also fund all the training required by native people in order for them to take advantage of the employment created through such economic development measures. That position is clearly enunciated in the submission of the United Native Nations Louis Riel Metis Association of BC, which stated that:

> The economic development is an approach which would allow native Indian people to participate in the process of creating their own jobs by becoming involved in entrepreneurial ventures which would create employment.

It added that:

> What is in fact needed to ensure an economic development is successful, is for federal agencies to sit down with democratically elected representative organizations in native communities and establish a plan through which the resources of various departments can be turned over to an accountable Indian controlled economic development Institution.

More Education and Training

The fourth major theme which emerges from an examination of the briefs presented by native groups to the Abella Commission is their recognition of the importance of education and training in improving the employment prospects of native people. This perspective is captured nicely in the submission of the Dene Nation, which states that:

> First and foremost, our people suffer in the job market because we have a much lower standard of education....This is the basic factor underlying the underemployment which confronts the Dene.

In like manner, Native Outreach Saskatoon notes that:

> At the present time...the majority of Native people do not have skills to compete in the labour market. Until these skills are developed, no amount of legislation will account for successful placement.[32]

A measure of the importance native groups attached to training can be found in the lengthy submission of the Union of Ontario Indians. In this, twelve of the thirty-five recommendations (slightly more than a third) call for action to deal with education or training issues. The balance are taken up with economic development proposals and recommendations for the establishment of affirmative action measures for the benefit of native people seeking employment.

The briefs of the Native Women's Pre-Employment Training Association,[33] and the BC Native Women's Society also emphasized the value of all manner of training to enable natives to succeed in the labour market. Included in their list of priorities were such things as developmental courses, rotational assignments, or on-the-job training. Likewise, the Native Outreach Saskatoon brief called specifically for employment related training. It also added that:

> [T]rain us, then we can be placed into employment with our heads high rather than being forced on an employer only to be set up for another failure.

And in a realistic appraisal of the value of education and training, the Tungavik Federation of Nunavut brief declared that, "The elimination of systemic barriers does not and cannot assist those who are not qualified." The Nishnawbe-Aski Nation brief added that, "In the long term, education can be a potent tool for the eradication of prejudice." As was the case with economic development, native group briefs were generally (but not universally) careful to specify that the education and training they needed to function satisfactorily in the labour market be under their control.

Differences

Although very similar in the manner in which native groups perceived ways in which their people could improve their standing in the labour market, there was nevertheless a noticeable divergence on the emphasis they placed on the issue of native control. For example, groups such as the Dene Nation, the Tungavik Federation of Nunavut, the Union of Ontario Indians, the Nishnawbe-Aski Nation, the Association of Iroquois and Allied Indians, the United Native Nations Louis Riel Metis Nation of BC, and to some extent the Assembly of First Nations tended to emphasize the need for native control over the employment related programs and services made available to them. This is understandable in the light of the fact that all these groups represented native people who occupied a land base of some kind. On the other hand, groups such as the Native Women's Pre-Employment Training Association, Native Outreach Saskatoon, and the BC Native Women's Society, whose membership was largely urban, were conspicuously less interested in promoting native control of educational or training institutions.

In like manner, there were differences in emphasis in the briefs from native organizations on the issue of discrimination in employment. This ranged from the brief of the Native Outreach Saskatoon organization, which does not mention discrimination per se and alludes to it only in the most indirect manner, to that of the Nishnawbe-Aski Nation, which declares flatly that:

> [W]e can't participate in the industrial economy primarily due to the endemic and systematic racism in Canada.

In addressing the issue of enhancing the access to employment of native people in a practical sense, virtually all native group briefs which commented directly on the matter came down squarely in favour of legislated mandatory affirmative action.

Disabled Persons

General

As indicated in Table 4.1, the sixty-one briefs by groups representing disabled persons accounted for nearly twenty-one per cent of the total submissions presented for consideration. Like the briefs of women's groups and native organizations, not all those by groups representing the disabled followed exactly the format proposed by Justice Abella. Similarly, disabled persons group submissions varied considerably from one another, not only in terms of the assumptions made about the nature and scope of the issues involved but also in the remedies suggested. Finally, as was the case with a number of the briefs from women's organizations and native people's groups, most disabled group submissions viewed the matter as one of discrimination by employers. However, more so than either women's or native people's groups, those representing disabled persons stressed the need for close management-union collaboration in the establishment of affirmative action measures in favour of the handicapped.

As was the case with submissions of women's and native groups, a significant number of briefs from agencies representing disabled persons referred specifically to the existence of discrimination in the workplace. This notion was articulated in a variety of ways. For instance, the Multiple Sclerosis Information Exchange viewed the matter as that of a lack of equality in employment in declaring that, "Until every employer in Canada has undertaken an Equal Employment Program there will be no equality in employment."[34] In like manner, the Canadian Hearing Society saw the issue as one of the stereotyping of deaf people as capable of no more than menial jobs.[35] For its part, the Canadian National Institute for the Blind articulated the notion in terms of employment barriers faced by the blind.[36] On the other hand, the submission of the Coalition of Provincial Organizations of the Handicapped declared bluntly that, "The high unemployment rate is a direct result of discrimination against disabled Canadians in the workplace."[37] It added that "Systemic discrimination is the most pervasive and prohibits most disabled Canadians entry into the workplace."[38] These sentiments were echoed in the brief of the Saskatchewan Voice of the Disabled, which stated that the disabled suffered from historical systemic discrimination and from the long term effects of domination and subordination.[39]

Themes

Despite a variety of approaches to ensuring that disabled Canadians were able to compete successfully in the labour market advanced by these groups, certain related concerns appeared in a number of guises in many of their briefs. The first was that the unemployment levels amongst disabled persons were unacceptable. The second was a determination to ensure the full integration of disabled persons into the labour force, in all aspects of that term. The third was an emphasis on the adaptations needed in the workplace to enable disabled individuals to function effectively on the job. With respect to the remedies proposed, these can be categorized into the two following broad groups: (1) state-directed affirmative action measures, and (2) incentives to employers to promote the hiring of disabled individuals.

Unemployment Level of Disabled Persons

All groups representing disabled persons indicated that handicapped individuals faced significant barriers to employment. Most briefs attributed this to an attitudinal problem, a perspective crisply articulated in the submission of the Multiple Sclerosis Information Exchange, which declared that:

> There are two attitudinal barriers to the employment of the disabled. The first is the public perception of the disabled as helpless dependents. The second is an unhealthy self-image carried by the disabled themselves.

This notion was supported by the Canadian Hearing Society, which asserted that, "The problems of deaf and hard-of-hearing people are great and have been underestimated or misunderstood.[40]

Those briefs which provided data about the level of unemployment amongst the disabled all indicated that this was extremely high and that the participation rate of disabled persons in the workforce was low. For example, the submission of the Coalition of Provincial Organizations of the Handicapped estimated that the unemployment rate for disabled individuals was about eighty(80) per cent, this out of an estimated pool of 2.3 million working age Canadians suffering from some type of disability.[41] It added that, "...handicapped persons represented less than one half of one per cent (0.5%) of the Public Service.[42] Similarly, the Canadian National Institute for the Blind estimated that there existed:

> an unemployment rate of between three times and five times that of the work force at large [for blind and visually impaired individuals]...and a participation rate of between ½ and 1/3 that of society at large.[43]

The Prince Edward Island Outreach Employment Program for the Disabled estimated the unemployment rate for disabled persons to be as high as sixty (60) per cent. It also estimated that disabled individuals represented less than one half of one per cent of the public service in Canada although roughly five per cent of the population were "employable disabled persons."[44] For its part, the Saskatchewan Voice of the Handicapped brief estimated the level of unemployment amongst "employable disabled Canadians" at between forty (40) and eighty (80) per cent.[45] The Disabled Persons Employment Service submission put the unemployment level for disabled persons in Saskatchewan at eighty (80) per cent.[46]

This illustrates the scope of the unemployment faced by disabled persons as seen by the organizations representing their interests. Assuming that the problems faced by handicapped individuals wishing to participate in the workforce were as serious as that portrayed in these submissions, the picture was bleak indeed. On the other hand, the briefs were not as precise as they might have been in specifying precisely what terms like "employable" or "handicapped" actually meant in terms of fitness for a job. It is therefore difficult to reconstruct a reliable estimate of the severity of the problem from these briefs. Nevertheless, for the purposes of this discussion, it is assumed that while the actual scope of the problem as it then existed is impossible to verify, unemployment amongst the disabled was nonetheless very high.

Integrating the Disabled into the Labour Market

A second area of major concern raised by groups representing disabled persons was the need to integrate such individuals fully into all components of the labour market. Thus, the brief of the Canadian Hearing Society stresses that equal opportunity for the deaf and hard of hearing "should be emphasized and achieved."[47] In a much stronger statement, the submission of the Coalition of Provincial Organizations of the Handicapped asserts that:

> Disabled citizens will no longer accept anything but social/economic equality and accept as part of this the right to work.[48]

It adds that, "The goal of Equal Employment Opportunities [sic] is to promote equality. All people are treated the same in the job market."[49] It also adds that:

> The goal of Affirmative Action is...to have a particular business or corporation's employee population more accurately resemble the Canadian population. Disabled workers should be randomly distributed within the entire organizational structure.[50]

Similarly, the brief of the Saskatchewan Voice of the Handicapped calls for "...the utilization and integration of the designated groups into the workforce in similar proportion to their incidence in the working age population."[51] And, the submission of the Canadian Council of Rehabilitation Workshops notes that, "...many persons in workshops cannot compete and take advantage of opportunities on an equal basis with others."[52] What is evident from this is that at least some of the organizations representing the disabled saw the issue of addressing unemployment amongst disabled persons as one of instituting measures to ensure that such persons were proportionally represented at every level in all components of any employer's workforce.

Adaptations to the Workplace

The third major area of concern expressed by many groups representing disabled persons was the need to adapt the workplace to accommodate the needs of the handicapped as well as the provision of specialized measures to allow them to function successfully on the job. In this respect, groups representing the deaf or the blind called for adaptations to the workplace and the provision of specialized services designed specifically to assist those they represented. Specifically, the Canadian Hearing Society brief stressed the need for interpreters (oral or sign language), note-takers, tutors, and for devices such as personalized FM systems so that deaf persons could take advantage of vocational training to prepare themselves to participate fully in the labour market. It also called for training institutions to provide equipment representative of models used in industry. In addition, it urged that work adjustment training, educational upgrading, and communications training be developed specifically for the deaf. Moreover, it recommended that measures be taken to ensure that "...reasonable accommodation to adapt jobs for deaf and hard of hearing people,"[53] and that specialized job placement services—including vocational counselling—be made available.[54] In the same context, the Montreal Association for the Blind urged the establishment or expansion of training programs (including on-the-job training) specifically designed to be of benefit to the blind. It also called for the provision of specialized technological aids so that blind persons could take advantage of such training. In addition, it recommended that subsidies be provided to enable blind individuals to function in any particular job. It also suggested that such subsidies be available under a wide range of circumstances, including making a place of work accessible to the blind and the purchasing of braille computer terminals.[55] These recommendations were supported by the brief of the Canadian Institute for the Blind which called for training and competent specialized services geared to the individual needs of handicapped persons.[56]

On the other hand, other groups promoted less specific and more wide-ranging initiatives. For example, the brief of the Multiple Sclerosis Information Exchange called for the sensitization of personnel officials to the special employment needs of the disabled. It also urged that disabled individuals have access to judicial remedies if they believed that the tests or standards which excluded them from consideration for a job were not integral to that position. In addition, it advocated that any disabled person be exempted from layoff "...until the percentage of disabled employed within the firm/corporation equals or exceeds the percentage in the total population."[57] Likewise, the submission of the Coalition of Provincial Organizations of Handicapped called for the "restructuring of the task components of a particular job to eliminate or modify non-essential duties which may not be performable by the disabled person employed."[58] It also recommended training programs appropriate to the circumstances of disabled persons and that an enterprise's employee population reflect the composition of the employable population.[59] The brief of the Saskatchewan Voice of the Handicapped recommended that jobs be designed to "match the physical and financial requirements and resources of individuals, including the physically disabled."[60] It also recommended the establishment of job-sharing and flex-time systems in order to accommodate the particular needs of disabled persons.[61] All of the foregoing are consistent with the recommendations of the Canadian Council of Rehabilitation Workshops, which suggested the establishment of training, work experience programs, and the adaptation of job requirements in order to enable disabled persons to function in the labour market.[62]

Remedies

With respect to the introduction of measures to promote the employment of disabled persons, virtually all groups preferred some sort of government involvement. Many of them called for a wide range of state-directed legislative measures designed to oblige employers to hire, train, and promote the disabled. Others urged the adoption of a more indirect government involvement, such as tax incentives or other forms of public subsidies for employers who voluntarily established affirmative action programs in favour of disabled persons.

State-Mandated Affirmative Action

Although many groups advocated some form of state involvement in affirmative action measures to promote the employment of disabled persons, not all of these agreed on why such action was necessary nor on the specific actions to be taken by governments. By way of explanation, for the purposes of this discussion the distinction made by Justice Abella between "mandatory programs" and "incentives" will be applied here.[63] For example, the brief of the Coalition of Provincial Organizations of the Handicapped promoted the establishment of mandatory affirmative action measures as the mechanism for correcting what it termed the "historical imbalances" in the workforce.[64] This implies that this group considered that anything other than statistical parity in an enterprise's workforce was sufficient grounds for state intervention. Their remedy of choice for these "imbalances" was what they termed "preferential hiring." This they defined as the obligatory hiring of a qualified disabled person in the absence of the norm of statistical parity.[65] They also declared that:

> Affirmative action programs should be legislated by the Federal Government and given the force of law.[66]

In addition, this group recommended that a compliance board with broad powers and completely disassociated from existing federal government departments be established to administer any workplace affirmative action program. It further recommended that this board be placed under the jurisdiction of the Canadian Human Rights Commission. It also urged that the Canadian Human Rights Act be modified to permit the application of strict enforcement and compliance measures to any affirmative action legislation.[67] The submission of the Saskatchewan Voice of the Handicapped also favoured strong state intervention to promote the employment of the handicapped. Specifically, it recommended the establishment of "...a regulatory/legislative affirmative Action program...."[68] And, like the Coalition of Provincial Organizations of the Handicapped, it favoured the establishment of a:

> centralized bureaucratic oversighting agency such as the Equal Opportunity Commission in the U.S.A. to...ensure the implementation of affirmative action programs, with enforceable penalties for non-compliance.[69]

Other groups which advocated mandatory affirmative action proposed less specific measures. For instance, the brief of the Multiple Sclerosis Information Exchange simply calls for the introduction of mandatory affirmative action, without going into detail. This brief acknowledged that such measures would be more costly than voluntary ones and would involve the creation of additional bureaucracies to administer them. On the other hand, it argued that such costs would be offset by the taxes paid by newly-employed disabled persons.[70] The submission of the P.E.I. Outreach Employment Program for the Disabled called for the establishment of mandatory affirmative action programs through legislation. It also called for such legislation to be administered by an "independent body."[71] Similarly, the submission of the Disabled Persons Employment Service advocated the implementation of mandatory measures and the introduction of contract compliance regulations for large private sector employers, without suggesting specific measures to achieve this.

Incentives to Employers

However, not all groups representing disabled persons favoured state-directed mandatory affirmative action. Eleven opted for an approach based on incentives to employers. Thus, although it was sharply critical of the efforts of both employers and governments to support the hiring of disabled persons, the Canadian Hearing Society urged that affirmative action be made attractive to employers by offering them tax or other economic incentives to hire the disabled.[72] Another group which favoured an incentive approach to affirmative action was the Montreal Association for the Blind. It asserted that:

> We favour voluntary programmes, believing that voluntary programmes would prove more successful at integrating handicapped persons into the workforce in the long term.[73]

They added that they believed that forcing employers to hire the handicapped was not the best way to integrate disabled persons into an employer's workforce nor to ensure their acceptance on the job. This group also advocated the use of tax credits as incentives to employers to establish affirmative action hiring on behalf of the handicapped.[74]

One group which appeared to have opted for both carrot and stick approaches was the Canadian National Institute for the Blind. It noted that:

> [W]e believe that the best course for equality in the workplace is through some voluntary, yet defined structure. We do not think that there is advantage to be gained by applying rigid and mandatory requirements, which inevitably polarize matters and result in tensions being inappropriately handed down to those whom the exercises were originally designed to assist.[75]

What this group proposed was in effect a system which was initially "stimulative" but which incorporated "disincentives" for non-compliance. This involved various types of wage support and tax incentives made available to employers at the time disabled individuals were hired, with sanctions imposed as "payback penalties" in cases where the initial incentives did not lead to permanent employment.[76] This approach suggests that these groups recognized that there would be increased costs for employers hiring handicapped persons.

Other Considerations

Lastly, three additional points emerging from the submissions of groups representing disabled persons deserve comment. First, a significant number of these briefs emphasized that management-union collaboration was critical to the success of any affirmative action program. No other group briefs stressed this point as often as did those representing disabled persons. As with the issues examined earlier, this position was articulated in a variety of ways, with some laying greater stress on it than others. The statement of the Saskatchewan Voice of the Handicapped best captured the nature of the concern. It stated that:

> Our organization acknowledges problems in regards to job classification and promotion particularly within a unionized setting if affirmative action is not based on negotiation between union and management.[77]

Secondly, two of these briefs, those of the Coalition of Provincial Organizations of the Handicapped and of the Saskatchewan Voice of the Handicapped declared that providing jobs for the handicapped was the responsibility of employers. The second group justified this position on the basis that doing so was a social and community responsibility on the part of employers. Thirdly, some briefs called for government support for their efforts in attempting to enhance the employment possibilities for their members, usually through some form of contracting out of services by governments to the agency. The briefs of the Coalition of Provincial Organizations of the Handicapped and the Employment Services for the Physically disabled fell into this category.

Visible Minorities

General

Visible minority groups from across the country submitted fifty-five of the two hundred ninety-four briefs presented to the Abella Commission. This represented 18.7 per cent of the total. As was the case with the briefs from the groups already examined, the emphasis placed on particular aspects of the notion of employment equity varied considerably. So too did their suggestions for corrective measures to the problems they perceived were faced by members of their groups in the labour market.

Themes

Nevertheless, a number of linked issues and assumptions about the workings of the labour market in Canada appear in many of the visible minority group briefs. The first and most common was their perspective of employment discrimination as racism. The second was the belief that employment discrimination in Canada was largely institutional and systemic, although some briefs also referred to "racist employers" in the context of wilful discriminatory practices. The third was the perceived lack of access to education, training, trade certification and professional accreditation for immigrant members. In terms of the remedies these groups proposed to rectify what they saw as discrimination in the workplace, virtually all of them which commented specifically on this supported the establishment of mandatory workplace affirmative action programs. A much smaller proportion of these groups suggested the adoption of voluntary measures or incentives to employers of one kind or another to encourage them to introduce affirmative action measures in favour of visible minorities. In addition, most groups stressed that there was an urgent need for the collection of demographic and statistical data by employers on their workforces as the basis for administering an affirmative action program. As well, some groups urged that human rights commissions be given the mandate to administer affirmative action programs. Some also emphasized that unions had an important role in preparing for, administering, and promoting affirmative action in the workplace.

Discrimination as Racism

In some respects, racism was to visible minority groups what the sense of dissociation was to native groups: the defining feature of their perception of how labour markets functioned in Canada. For example, the submission of the National Association of Canadians of Origin in India asserted that, "...in no other aspect of life in Canada has the impact of racism been as devastating as in employment."[78] It went on to add that, "...discrimination in employment is usually extremely subtle and complex and almost always covert."[79] It also described racism in Canada as a "deep-rooted disease" and not as a passing phase.[80] It added that:

> Barriers to equality of employment opportunities are the result primarily of the attitudes of those who have the power to make decisions affecting the economic situation of others.[81]

The notion that there existed widespread racial employment discrimination directed at members of visible minorities found in the foregoing example was echoed in a somewhat less stark fashion in the brief of Professor Peter Li (then of the University of Saskatchewan), who declared that:

> [T]he Canadian labour market is segmented along racial and sexual lines such that many individuals encounter structural barriers in the job market on the basis of their racial origin and gender.[82]

The submission of the Calgary Vietnamese Canadian Association asserted that the country seemed to want to relegate visible minority group members to the status of second class citizens, with no access to any but the low-skill low-paying jobs that other Canadians did not want.[83] They attributed this to two reasons. The first was the existence of what they termed the "racist employer."[84] The second, and in their view the more important one, was:

> [T]he general reluctance of the average employer who, for the sake of his business security, would not venture to hire someone who looks different and who speaks English with an accent.[85]

The brief of the Centre for Research-Action on Race Relations declared that opposition to affirmative action in favour of minorities was grounded in racial prejudice against minority groups based on their race, colour, or ethnic origin.[86] The League for Human Rights of B'Nai B'Rith Canada argued that practices or procedures which might be neutral in intent might nevertheless have a severe negative impact upon certain groups and in effect discriminate against them on the basis of racism and bigotry.[87] Thus, it can be seen that for many visible minority groups the issue concerning them was not so much discrimination in employment per se. Rather, it was one of racial discrimination which manifested itself in the workplace. For these groups it was a human rights issue to be treated as such in terms of the remedies they saw as being appropriate.

Discrimination as Institutional and Systemic

The second issue (or perhaps more precisely, the theme) found in the submissions of visible minority groups centred on two related notions. The first, reflecting in a sense the views of women's groups, was that much of the racial discrimination in employment in Canada was institutional or systemic, as opposed to intentional and overt. That is, that the employment practices of firms which had the effect of barring visible minorities from certain jobs were the result of the application of norms or standards which, while neutral on their face, nevertheless excluded those visible minorities or that they were simply the continuation of traditional ways of doing things. The second was the notion that the existence of discrimination in employment should be determined on the basis of the consequences produced rather than on the proof of intent to discriminate.

For example, the brief of the League for Human Rights of B'Nai B'Rith Canada declared that what it termed "unintentional systemic discrimination" in the work place existed and urged the enactment of:

> [F]ederal and provincial laws which make it unnecessary for the aggrieved person or class to show discriminatory intent. It should only be necessary to show discriminating consequences.[88]

In like manner, the National Association of Canadians of Origins in India spoke of recruitment systems which, while established for other purposes, operated to exclude particular groups from certain types of employment. It added that such "institutional or systemic" discrimination could be either intentional or unintentional.[89] Similar sentiments were echoed in the submission of Professor Li, who called for programs to combat what he called "institutional discrimination."[90] The Ottawa-Carleton Immigrant Services Organization also asserted that visible minorities faced "systemic discrimination" as well as other barriers to the proper representation of visible minorities in the labour market.[91] The Centre for Research-Action on Race Relations also characterized the experience of visible minorities in the labour market as problems of "systemic discrimination." It added that:

> [I]t is the consequence of a policy or act what matters, rather than the intention or motive....Consequently, institutional policies or practices that seem fair and neutral on their surface but which have the affect (sic) of adversely excluding women or minorities are discriminatory....[92]

The notion that much of the employment discrimination which visible minority groups perceived as being directed against them was institutional and systemic in nature later reappeared as one of the key assumptions of the Abella Commission Report. So too was the related notion that it was consequences and not intent which ought to determine the presence or absence of discrimination on the job.

Access to Education, Training, and Accreditation

The third major concern to visible minority groups was what they perceived as a lack of access by immigrant members of visible minorities to education and training, as well as to trades certification and professional accreditation for qualifications acquired abroad. The group which expressed the most serious and wide-ranging concern about this was the Calgary Vietnamese Canadian Association. In many respects, their brief touched on the concerns of other groups but in a more systematic way. The two most pressing concerns of this group were the lack of opportunity for their members to acquire fluency in English as a working language and a related deficiency in acquiring skill training or "higher education."[93] In support of that claim, they noted that only three to five per cent of the people they represented possessed enough English to function adequately on the job. They also noted that the lack of proficiency in English often meant that their members were ignorant of their rights as workers and as such were easy prey for unscrupulous employers.[94]

Perhaps the most pressing concern of the Calgary Vietnamese Canadian Association was the fact that members of their community were being denied access to government-sponsored language training. In support of this claim they noted that the Unemployment Insurance regulations denied their members benefits if they enrolled in full-time language training courses.[95] They indicated that individuals who attempted after-hours education or training courses often abandoned that training because of the demands of their regular jobs. They also stressed that even the welfare regulations some of their members were subject to did not provide for attendance at English language classes. Moreover, they criticized trade and professional associations for insisting on what they regarded as unjustifiably high standards of fluency in English before being accepted for certification or accreditation. A similar position was taken by the Ottawa-Carleton Immigrant Services Organization, which called on governments to:

> [R]eview the current evaluation standards and procedures in the respective professions insofar as recognition and re-certification of academic qualifications acquired abroad are concerned.[96]

This indicates that visible minority groups saw access to a variety of educational, training, certification, and professional accreditation as important steps to ensure that their members enjoyed equal opportunities for employment.

Remedies

In terms of recommendations for government action, most of these groups opted for some form of state-directed mandatory workplace affirmative action. As was the case with the briefs of the other groups examined thus far, that option was not unanimously adopted. Some groups preferred an incentive approach and still others opted for a blend of the two.

Mandatory Measures

With respect to a mandatory approach, the submission of the National Association of Canadians of Origin in India was unequivocal. It recommended that:

> [M]andatory affirmative action programs be introduced at all levels of government and private sector employment in Canada.[97]

It added that such affirmative action would entail the:

> identification and elimination of systemic barriers from all employment systems and practices which disproportionately bar certain groups.[98]

This group also noted that affirmative action measures ought to include provisions which "set goals and time tables to increase the numbers and proportions of designated groups at all levels of the organization."[99] It also recommended that large employers (which they defined as enterprises with more than a thousand employees) be required to establish affirmative action programs within a year of the enactment of the necessary legislation. In addition, they urged that all other employers be required to follow suit within three years. Finally, they recommended that governments establish contract compliance to ensure that enterprises dealing with government also implemented acceptable affirmative action programs.[100] That position was supported by the brief of the Black Women's Association of Alberta, which took it as a given that racism existed in the Canadian labour market and which advocated mandatory affirmative action as the remedy for this.[101]

The idea of mandatory affirmative action was also supported by the Ottawa-Carleton Immigrant Services Organization. For the public sector, it recommended mandatory affirmative action programs which entailed the preparation of detailed plans and time tables for their implementation to increase visible minority representation in public employment, and particularly in law-enforcement agencies and the judiciary. In addition, it called for public funding for training to be made available only to those institutions which instituted affirmative action programs. It also called for governments to ensure that visible minorities were proportionately represented in all media advertising and publications and that the presence of an acceptable affirmative action program be a prerequisite for the granting of broadcasting licenses. It also advocated the establishment of contract compliance to ensure that private sector employers adhered to government recruitment practices.[102] The Centre for Research-Action on Race Relations noted that voluntary measures provided no incentive to employers to modify their recruitment and promotion practices. It therefore supported mandatory affirmative action programs for government departments and agencies. It also suggested that penalties for non-compliance by the private sector include: (1) cancellation or withdrawal of contracts to supply government with goods or services, or portions thereof; (2) barring contractors from future contracts; (3) imposing fines or the requirement to establish acceptable affirmative action programs by human rights commissions; and (4) withholding payment on contracts until compliance was achieved.[103]

Incentives for Employers

There was not, however, unanimous consent on the merits of mandatory affirmative action. For example, the position of the League for Human Rights of B'Nai B'Rith Canada was for:

> an approach to affirmative action which is aimed at improving the qualifications and opportunities of disadvantaged groups rather than extending them preferential treatment at the cost of discriminating against others.[104]

In addition, this group declared that arbitrarily determined quotas for minority group workers were an overly simplistic solution to a complex problem which would not produce the desired results. It favoured tax incentives or grants designed to encourage employers to establish affirmative action programs voluntarily. On the other hand, it also advocated the enactment of both federal and provincial legislation to make it unnecessary for individuals who considered themselves to be discriminated against on the job to prove "discriminatory intent." It wanted legislation which would require no more than a demonstration of what it called "discriminating consequences" to trigger remedial state action.[105]

Still other groups proposed a combination of mandatory and voluntary or incentive approaches. Thus, although the Ottawa-Carleton Immigrant Services Organization advocated rather stringent mandatory affirmative action measures for public sector employers, it advocated tax or other economic incentives for those private sector employers who instituted affirmative action programs in favour of visible minorities. It also suggested that such employers be shown preference in the awarding of government contracts.[106] In like fashion, the Centre for Research-Action on Race relations advocated a blend of contract compliance, tax incentives, and mandatory measures for private sector employers, as opposed to the mandatory programs it urged be imposed on public sector agencies. With respect to contract compliance, it suggested that this apply to enterprises employing more than one hundred employees or in cases where government contracts of more than $100,000 value were involved. And, like the Ottawa-Carleton Immigrant Service Organization, it advocated that firms doing businesses with government who had acceptable affirmative action plans in place be given priority consideration in the granting of government contracts.[107]

Other Remedies

A third proposal to improve the employment prospects of visible minorities advanced by these groups was that employers be required to provide statistical data on their employees in order to allow for a more effective monitoring of their recruitment of visible minorities. Thus, the League for Human Rights of B'nai B'Brith Canada called for "...the proper collection, use and analysis of relevant data on employees."[108] The brief of the National Association of Canadians of Origin in India was even more specific. It asserted that what was needed was:

> Employers in general and federal, provincial and municipal governments in particular, be required to maintain and make available to interested parties, data on racial composition of their respective work force in order to facilitate development, introduction and monitoring of affirmative action programs.[109]

For his part, Professor Li urged that:

> Crown corporations should report on progress concerning affirmative action, and release data on minorities and women employees in the payroll so that public pressure can be brought to bear on those companies which fail to fulfill their mandatory quotas.[110]

In like manner, the Centre for Research-Action on Race Relations noted that, "The lack of precise data on race means a lack of statistical proof needed for employment discrimination...." and called for "statistical data to establish the existence of discrimination by showing the small percentage of minorities in an enterprise."[111] As an example of what it had in mind, it noted that without statistical data on race, colour, or ethnic origin it was impossible to establish the level of visible minority representation in the federal public service.[112]

Although many visible minority groups advocated the establishment of some form of government regulation of the labour market in order to enhance the employment opportunities of their members, few advanced specific suggestions as to how this could be accomplished. There were, however, exceptions. For example, the National Association of Canadians of Origin in India urged that human rights commissions in Canada be given the mandate to deal pro-actively with employment discrimination matters. It also urged that governments allocate these commissions greater resources so as to enable them to deal expeditiously with complaints.[113] The brief of the Ottawa-Carleton Immigrant Service Organization echoed both these concerns.

A small number of visible minority groups addressed the issue of union involvement in the affirmative action process on the job. Like many of the submissions of disabled groups, the Brief of National Association of Canadians of Origins in India asserted that the involvement of unions was crucial to the successful establishment of affirmative action programs. It added that such programs ought ideally to be developed, implemented, and monitored by both employers and unions.[114] On this issue, the Ottawa-Carleton Immigrant Services Organization also recommended that governments actively promote the adoption of affirmative action programs by the Canadian labour movement as a whole and work to have unions negotiate non-discrimination clauses in their collective agreements.[115]

Lastly, there were a number of issues raised or proposals advanced by particular groups that are of interest in illuminating the positions of such groups on certain matters. Perhaps the most extreme of these suggestions were made by the National Association of Canadians of Origins in India. That group advocated that there be established what it called a "strategic investigation program." This entailed the detailed investigation by government agencies of firms, institutions, and entire industries of their recruitment policies and practices related to hiring, promotion, training, career development, and layoff as these affected visible minorities. In addition, it recommended the adoption of what it designated as "testing." Essentially, this was a process of employer entrapment by state agents.[116]

For its part, the Centre for Research-Action on Race Relations suggested that a potential to acquire skills was a legitimate factor in assigning jobs to visible minority groups who were the object of past discrimination.[117] Also, Professor Li argued that Crown corporations ought to be held responsible for what he termed "social mandates," with legal sanctions attached for those enterprises which violated those mandates. He also recommended that there be an affirmative action officer attached to every Crown corporation in order to monitor compliance with all affirmative action programs. It is not entirely clear whether Professor Li proposed that these functionaries become a part of the enterprises' normal personnel staff or if they were to be agents of some other government body assigned to a particular Crown corporation. The context in which this suggestion was made indicates that it was the latter. Finally, in contradiction to the positions taken by others, the League for Human Rights of B'Nai B'Rith Canada declared that when establishing affirmative action measures "Qualitative objectives must take precedence over the quantitative."[118]

Summary and Analysis of Designated Group Positions

This concludes the review of the submissions of the groups identified in the terms of reference of the Abella Commission as being denied full opportunity in the labour market, namely, women, native people, disabled persons and members of visible minorities. The interests of these groups was to ensure that their members be able to participate fully in that labour market.

Given the differing interpretations of the concept of workplace affirmative action by groups representing women, native people, disabled persons, and members of visible minorities, their almost virtual preference for state intervention as the most effective remedy for the kind of on the job discrimination they claimed to be subject to might appear inconsistent. The reason for this unanimity of remedy despite the differences in their understanding of the purpose of employment equity is almost certainly due to the manner in which Justice Abella called for formal briefs on the issue. The Commission's initial letter of June 27, 1983 to groups and individuals and its media advertising were general in nature. They were designed to acquaint interested groups and individuals, as well as the general public, with the existence of the Commission, provide a very brief outline of its purpose, and to request input into its work.[119]

On August 5, Justice Abella sent out a much more detailed and explicit request for feedback. That same letter was also sent out later to any group or individual who later approached the Commission seeking input into its work.[120] In the June 1983 letter advising individuals and groups of the formation of her Commission, Justice Abella indicated that its purpose was to examine ways by which equal access to employment was—or could be made—available to women, native people, disabled persons, and members of visible minorities in the context of the employment practices of eleven federal Crown corporations.[121] By contrast, her letter of August 5 made no reference to the employment practices of those Crown corporations. Moreover, this second letter (consistent with the Commission's Terms of Reference and the objectives of the government of the day[122]) emphasized the need to promote employment opportunities for these designated groups as well as to eliminate the systemic discrimination in the workplace which it alleged limited those opportunities.[123] In addition, the August 5 letter called for suggestions and recommendations on the following lengthy list of specific items. First, it asked respondents to comment on the relative merits of voluntary versus mandatory programs, the advantages and disadvantages of various kinds of mandatory programs, and the determination of appropriate goals and timetables for the employment of each designated group. Second, it solicited views on the use of tax or other incentives to encourage employer compliance with affirmative action measures, effective monitoring and enforcement mechanisms, and the appropriateness of the collection, analysis, and use of statistical data on employees. Third, it asked for a response on the desirability of introducing flexible work patterns in the workplace, on the importance of training and development programs in promoting employment equity, and on problems involved with recruiting, hiring, and promoting employees. Fourth, it invited feedback on problems associated with arbitrary differences in incomes, the desirability of providing child care benefits of all kinds to workers, and on the potential conflicts between affirmative action and seniority arrangements between employers and employees. Fifth, it asked for comments on the effects of existing legislation on minimizing barriers to equality in employment, the influence of technological change on facilitating equality in employment, and the impact of economic downturns on the options for implementing programs and services aimed at improving the employment prospects of designated group members. Finally, it solicited comment on "Any other perceived or actual barriers to equality in employment, including education options, cultural and social expectations, historical disadvantages, physical, geographic, or logistic obstacles, and attitudinal impediments."[124]

Justice Abella's August 5th letter was more than a lengthy reiteration of her June 27th invitation to participate in the work of her Commission. Notwithstanding the disclaimers at the end regarding the need to address the concerns of employers and unionized employees when implementing workplace affirmative action measures, her second solicitation for input is in effect a carefully crafted invitation to the recipients to respond in a fashion consistent with the post-materialist ideas about workplace conditions elaborated by the Bird Commission and expanded later to include native people, disabled persons, and members of visible minorities, and in effect glosses over employer or union concerns. It is, as well, consistent with the Terms of Reference given the Commission by the government in that it accepts as fact the notion that there was widespread and "systemic" discrimination in the workplace in Canada. It is, in effect, a request to respond along certain lines and not others.[125] It is also an example of how institutions (in this case, a royal commission) can channel the course of political debate in Canada. More significantly perhaps, the content of this second letter reflects Justice Abella own predispositions to the use of state power to achieve social and political objectives deemed to be in the public interest.[126] The full text of both letters is to be found in Appendix B.

Summation

The different understandings of legislated workplace affirmative action revealed in the briefs submitted to the Abella Commission[127] by groups representing women, native people, disabled persons, and members of visible minorities illustrated here demonstrates that not all of the ideas about workplace conditions in Canada articulated by the Bird Commission necessarily elicited identical comprehension of what workplace discrimination involved with respect to their interests. On the other hand, these pressure groups virtually all supported one of the Bird Commission's primary proposals: that some form of state intervention in the labour market was the most effective remedy for the on-the-job discrimination they claimed existed. More specifically, it illustrates that women's groups saw workplace discrimination in terms of opportunities closed to women which could be corrected with appropriate legislation. Similarly, groups representing disabled persons conceived the issue as one of ensuring that the workplace be adapted to the particular needs of handicapped individuals while those representing visible minorities saw workplace discrimination as a manifestation of racism on the part of employers. Like women's organizations, these two groups looked to state intervention in the labour market to correct the problem. That is, all were willing to allow the state to rectify an injustice and ensure equality in the workplace. These are essentially post-materialist values. Their positions represent an intent to redistribute wealth rather than to create it.

On the other hand, while groups representing women, disabled persons and visible minorities sought to change employers' hiring practices through state intervention in the labour market they nevertheless all implicitly acknowledged that their members were (and desired to be) an integral part of the system: not so with the majority of native groups. With them, the basic issue was what they viewed as the unwillingness of the larger society to recognize what they claimed was their special status as a group and to provide public funding for economic development and education, both firmly controlled by native people themselves. For example, while the Calgary Vietnamese Canadian Association strove to have their members become part of the larger society by pressing for English language training and the easier recognition of their own professional credentials by Canadian bodies, in contrast, native groups pressed for the protection of their languages and traditions and sought to limit the role of state bodies in their affairs while at the same time pressing for state assistance to pursue economic development goals which they exclusively controlled. While, like the other pressure groups, they also conceived of the experience of their members in labour markets as discrimination, their solutions tended to emphasize native controlled economic growth rather than the single-minded concern with wealth redistribution called for by those other groups. In this respect at least, the views of native groups tended to reflect materialist rather than post-materialist values. On the other hand, it is also clear that the native groups' support for affirmative action were grounded in the thoroughly post-materialist notions of promoting respect for their cultures, languages, and traditions.

In addition, the information presented here indicates that the briefs submitted to the Abella Commission by designated groups supported the ideas about workplace conditions in Canada as well as the remedy to be applied first articulated by the Bird Commission and later intimated by Justice Abella in her request for briefs, that is: that labour markets systematically discriminated against target group members; that it is the experience of the group, not that of individuals, that determines the presence of discrimination in the workplace; that society is obliged to assist target group members function successfully in the labour market; that labour markets are an ineffective mechanism for ensuring equality on the job; and that state intervention is the only effective remedy to address workplace discrimination. What this information also indicates is that these ideas had now attracted the political support of a coalition of groups representing women, native people, disabled individuals, and members of visible minorities, much as the government had no doubt intended, since one of the purposes of a royal commission is to generate public pressure for an intended course of action.[128] As will be evident from the material reviewed in the following chapter, what this signals is a shift in influence regarding matters affecting workplace conditions away from the concerns and interests of employers and their representatives (and to some degree, those of organized labour) towards those of groups representing women, native people, disabled persons, and members of visible minorities.

Finally, the data presented here indicates that while Bradford's conclusions about the work and outcomes of the MacDonald Commission (whose existence completely overlapped that of the Abella Commission: from 1982 to 1985 as opposed to the Abella Commission's duration from June, 1983 to October 1984) was engaged in developing proposals to create the social and political environment for the adoption by the government of a "third national policy,"[129] grounded in what he has termed a "corporate neo-liberal national policy discourse," incorporating notions of state retrenchment and market liberalization,[130] the Abella Commission was concurrently generating proposals aimed at developing a model to promote a significantly interventionist role for the federal government in the country's labour markets, at the expense of the unfettered operation of those markets. This point is considered by Abu-Laban and Gabriel, who argue in effect that the introduction of a fully effective workplace affirmative action regime in Canada fell victim to what they label as the kind of neo-liberal agenda promoted, in part at least, by the MacDonald Commission and which they claim flourished in the late 1980's and 1990's.[131] What this suggests is that the political discourse dichotomy found by Bradford in his account of the work of the Gordon Commission[132] was alive and well in Canada two decades after that commission finished its work. The one emphasized a continued reliance on markets to promote economic growth and prosperity; the other stressed the capacity of state direction of the economy to achieve the same result.[133] In any event, the Mulroney administration adopted both the corporate neo-liberal policy of the MacDonald Commission and the interventionist thrust of the Abella Commission. It proceeded in time to limit the role of the state through program changes and its influence on economic matters by entering into a free trade agreement with the United States while at the same time expanding that role in the case of labour markets in Canada by enacting the Employment Equity Act. Moreover, this policy dichotomy was both adopted and expanded by the Chrétien government which followed it nearly a decade later. It, in turn, ratified the North American Free Trade Agreement with the United States and Mexico while at the same time strengthening the state's interventionist role in the labour market by amending the Employment Equity Act to achieve this.

1. The full text of this letter is to be found in Appendix B.

2. Report of the Royal Commission on the Status of Women in Canada, (Ottawa: Information Canada, 1970).

   Hereafter, this is referred to as the Bird Commission, after its Chair, Florence Bird.

3. Abella Report, p. 271.

4. National Archives of Canada, RG33-133(84-85/395), Vol. 12. File "Correspondence to Provinces with Addresses."

5. National Archives of Canada, RG33-133(84-85/395), Vol. 1, File "National Action Committee on the Status of Women."

6. National Archives of Canada, RG33-133(84-85/395), Vol. 1, File "Agricultural Institute of Canada."

7. National Archives of Canada, RG33-133(84-85/395), Vol. 1, File "le Réseau d'action et d'information pour les femmes."

8. National Archives of Canada, RG33-133(84-85/395), Vol. 1, File "Federation of Women Teachers' Associations of Ontario."

9. Ibid.

10. National Archives of Canada, RG33-133(84-85/395), Vol. 1, File "National Women's Liberal Commission."

11. National Archives of Canada, RG33-133(84-85/395), Vol. 1, File "Women in Science and Engineering."

12. In keeping with the distinction made by the Abella Commission between mandatory and voluntary affirmative action measures, in this context, the term "mandatory affirmative action" is used to differentiate whether employers are to be obligated by law to implement hiring, training, and promotion practices in favour of target group members, as opposed to simply encouraging them to do so. See, Report of the Commission on Equality in Employment, (Ottawa: Minister of Supply and Services Canada, 1984), Appendix A, p. 273.

    Hereafter, this will be referred to as the Abella Report.

13. National Archives of Canada, RG33-133(84-85/395), Vol. 1, File "Federal PC Women's Caucus of Calgary."

14. National Archives of Canada, RG33-133(84-85/395), Vol. 1, File "Canadian Association of Women Executives."

15. National Archives of Canada, RG33-133(84-85/395), Vol. 1, File "PC Women's Caucus of Peel-Halton."

16. Abella Report, Recommendation No. 18, p. 257.

17. See Section 10 of the 1986 Act or Section 19.1 of the amended Act of 1996.

18. This is true only of the amendment to the Act proclaimed in 1996 (see Section 42(2) of the Act. The Contract Compliance measures adopted by the government prior to the proclamation of that Act were not specified in the Act or the Regulations but were rather simply a policy adopted by the government.

19. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File "The Pas Friendship Centre.

20. National Archives of Canada, RG33-133(84-85/395), Vol. 1, File "Grand Council of the Crees of quebec.

21. See particularly the submissions of the following: Native Outreach Saskatoon, National Archives of Canada, RG33-133(84-85/395), Vol. 2, File "Saskatoon Native Outreach Services," Association of Iroquois and Allied Indians, Vol. 1, File "Association of Iroquois and Allied Indians," and the Dene Nation, Vol. 1, File, "The Dene Nation."

22. See the submissions of: Dene Nation, National Archives of Canada, RG33-133(84-85/395), Vol. 1, File, "The Dene Nation," and The Tungavik Federation of Nunavut, Vol. 2, File "Tungavik Federation of Nunavut."

23. See the submissions of: The Assembly of First Nations, National Archives of Canada, RG33-133(84-85/395), Vol. 1, File "National Indian Brotherhood;" Association of Iroquois and Allied Indians, Vol. 1, File "Association of Iroquois and Allied Indians;" Dene Nation, Vol. 1, File, "The Dene Nation;" United Native Nations Louis Riel Metis Nation of BC, Vol. 1, File, "Metis Association of BC, (Louis Riel);" Tungavik Federation of Nunavut, Vol. 2, File "Tungavik Federation of Nunavut;" and Union of Ontario Indians, Vol. 2, File "Union of Ontario Indians."

24. National Archives of Canada, RG33-133(84-85/395), Vol. 1, File "Association of Iroquois and Allied Nations."

25. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File "Tungavik Federation of Nunavut."

26. Ibid.

27. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File "Union of Ontario Indians."

28. National Archives of Canada, RG33-133(84-85/395), Vol. 1, File "Association of Iroquois and Allied Indians."

29. National Archives of Canada, RG33-133(84-85/395), Vol. 1, File "Dene Nation."

30. National Archives of Canada, RG33-133(84-85/395), Vol. 1, File "Nishnawbe-Aski Nation: Grand Council Treaty No. 9."

31. National Archives of Canada, RG33-133(84-85/395), Vol. 13, File "BC Native Women's Society."

32. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File "Saskatoon Native Outreach Services."

33. National Archives of Canada, RG33-133(84-85/395), Vol. 1, File "Native Women's Pre-Employment Training Association."

34. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "Multiple Sclerosis Information Exchange."

35. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "Canadian Hearing Society."

36. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "Canadian National Institute for the Blind."

37. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "Coalition of Provincial Organizations of the Handicapped."

38. Ibid.

39. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Saskatchewan Voice of the Handicapped."

40. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "Multiple Sclerosis Information Exchange."

41. National Archives of Canada, RG33-133(84-85/395), Vol 2, File, "Coalition of Provincial Organizations of the Handicapped."

42. Ibid.

43. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "Canadian National Institute for the Blind."

44. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "P.E.I. Outreach Employment Program for the Disabled."

45. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Saskatchewan Voice of the Handicapped."

46. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "Disabled Persons Employment Service."

47. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "The Canadian Hearing Society."

48. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "Coalition of Provincial Organizations of the Handicapped."

49. Ibid.

50. Ibid.

51. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Saskatchewan Voice of the Handicapped."

52. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "Canadian Council of Rehabilitation Workshops."

53. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "Canadian Hearing Society."

54. Ibid.

55. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File "Montreal Association for the Blind."

56. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "Canadian National Institute for the Blind."

57. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "Multiple Sclerosis Information Exchange."

58. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "Coalition of Provincial Organizations of the Handicapped."

59. Ibid.

60. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Saskatchewan Voice of the Handicapped."

61. Ibid.

62. National Archives of Canada, RG33-133(84-85/395), Vol, 2, File, "Canadian Council of Rehabilitation Workshops."

63. Abella Report, "Appendix A," p. 273.

64. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "Coalition of Provincial Organizations of the Handicapped."

65. Ibid.

66. Ibid.

67. Ibid.

68. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Saskatchewan Voice of the Handicapped."

69. Ibid.

70. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "Multiple Sclerosis Information Exchange."

71. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File "P.E.I. Outreach Employment Program for the Disabled."

72. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File "Canadian Hearing Society."

73. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File "Montreal Association for the Blind."

74. Ibid.

75. National Archives of Canada, RG33-133(84-85/395), Vol. 2, File, "Canadian National Institute for the Blind."

76. Ibid.

77. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Saskatchewan Voice of the Handicapped.

78. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File "National Association of Canadians of Origin in India."

79. Ibid.

80. Ibid.

81. Ibid.

82. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Peter S. Li."

83. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Calgary Vietnamese Canadian Association."

84. Ibid.

85. Ibid.

86. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Centre for Research-Action on Race Relations."

87. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "League for Human Rights of B'Nai B'rith Canada."

88. Ibid.

89. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "National Association of Canadians of Origin in India."

90. National Archives of Canada, RG33-133(84-85/395), Vol, 3, File, "Peter S. Li."

91. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Ottawa Carleton Immigrant Services Organization."

92. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File "Centre for Research-Action on Race Relations."

93. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Calgary Vietnamese Canadian Association."

94. Ibid.

95. This is altogether possible. Generally speaking, at that time Unemployment Insurance benefits were available only to individuals available for work. On the other hand, there were then programs in place which allowed for individuals to receive benefits while in training, but accessing those benefits was at the discretion

of an Unemployment Insurance Agent and was not available simply because someone wished to take advantage of training. Moreover, for a variety of reasons, the kind of training sought by an individual was not always available when wanted, primarily because of course scheduling by provincial institutions.

96. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Ottawa Carleton Immigrant Services Organization."

97. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "National Association of Canadians of Origin in India."

98. Ibid.

99. Ibid.

100. Ibid.

101. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, Black Women's Association of Alberta."

102. National Archives of Canada, RG33-133(84-85/395), Vol, 3, File, "Ottawa-Carleton Immigrant Services Organization."

103. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Centre for Research-Action on Race Relations."

104. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "League for Human Rights of B'Nai B'rith Canada."

105. Ibid.

106. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Ottawa-Carleton Immigrant Services Organization."

107. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Centre for Research-Action on Race Relations."

108. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, League for Human Rights of B'Nai B'Rith Canada."

109. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "National Association of Canadians of Origin in India."

110. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Peter S. Li."

111. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Centre for Research-Action on Race Relations."

112. Ibid.

113. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "National Association of Canadians of Origin in India."

114. Ibid.

115. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Ottawa Carleton Immigrant Services Organization."

116. National archives of Canada, RG33-133(84-85/395), Vol. 3, File, "National Association of Canadians of Origin in India."

117. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Centre for Research-Action on Race Relations."

118. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, League for Human Rights of B'Nai B'Rith Canada."

119. Abella Report, pp. 272 & 275.

120. Abella Report, pp. 273-274.

121. Abella Report, p. 272.

122. Annis May Timpson, Driven Apart: Women's Employment Equality and Child Care in Canadian Public Policy, (Vancouver: UBCPress, 2001), p. 101.

123. Abella Report, p. 273-274.

124. Ibid.

125. A request for Justice's Abella's opinion about the difference between her June and August letters has not been answered.

126. In addition to the positions she articulated in her report, Justice Abella has outlined her views on the imposition of workplace affirmative action in the following: "Toward Employment Equity for Women," in The Canadian Business Review, Vol. 12, No. 2, Summer 1985, pp. 7-14; "Employment Equity: Implications for Industrial Relations, An address given at the Annual Fall Industrial Relations Seminar, Kingston, ON: Queen's University Industrial Relations Centre, 1987; and "Interpreting Equality," An address presented at the Third Annual Conference on Human Rights and the Charter," Ottawa: Department of Justice, 1991.

127. It should be noted that many of the groups who submitted briefs to the Abella Commission also had representatives who met personally with Justice Abella as part of her schedule of meetings with groups and individuals. Groups such as the National Action Committee on the Status of Women, the Union of Ontario Indians, the Canadian National Institute for the Blind, the National Associations of Canadians of Origins in India, the Canadian Federation of Independent Business, and the Canadian Labour Congress, amongst many others, all both had representatives meet directly with Justice Abella as well as submitting formal briefs to her Commission.

128. G. Bruce Doern, "The Role of Royal Commissions in the General Policy Process and in Federal-Provincial Relations," in Canadian Public Administration, Vol. 10, No. 1, 1967, p. 421.

129. Neil Bradford, Commissioning Ideas: Canadian National Policy Innovation in Comparative Perspective, (Toronto: Oxford University Press, 1998). The term is Bradford,'s p. 102.

130. Bradford, p. 116.

131. Yasmeen Abu-Laban and Christina Gabriel, Selling Diversity: Immigration, Multiculturalism, Employment Equity, and Globalization, (Peterborough, ON: Broadview Press, 2002). See particularly pp. 129-163.

132. Bradford. See particularly chapters entitled "Searching for a New National Policy, 1950-1965: Economic Ideas and Party Politics" and "Still Searching, 1965-1975: Economic Ideas and Bureaucratic Politics," pp. 53-101.

133. Bradford, pp. 62-64.

Chapter Four

MORE INTERESTS AT WORK

Opposing Interests

The preceding chapter explored in detail the views and recommendations for action of those groups whose members stood to gain from the introduction of legislated affirmative action for the workplace. In contrast, this chapter examines and analyzes the reservations of groups which viewed its implementation with concern, if not with alarm: organized labour and employers and their organizations. Whereas designated groups pressed for employment equity regimes to be enacted into law, these latter groups expressed both philosophical objections to its implementation and practical considerations with respect to its application in practice. Where groups representing women, native people, disabled persons, and members of visible minorities justified their demands for workplace affirmative action on the basis of notions of equality and justice, the briefs presented by organized labour and employers examined in this chapter articulated their respective concerns about the preservation of the seniority principle within a legislated employment equity regime and about both the costs to enterprises that its enactment would entail and their loss of discretion in hiring and promoting staff. In addition, the views and concerns explored in this chapter also suggest why two successive federal administrations did not adopt all of the recommendations of the Abella Commission.

Organized Labour

General

In making contact with organized labour, Justice Abella wrote to over seventy union heads and national offices. She did not contact provincial federations of labour, regional labour councils, or individual union locals. The reason for this may have been dictated by the very short time given her to conduct her enquiry and prepare her recommendations. In all, seventeen briefs were received from organized labour groups (5.8 per cent of the total).[1] As was the case with submissions from designated groups examined in the previous chapter, not every one of organized labour's briefs addressed all the points that Justice Abella had suggested. One submission which did comment on virtually every point raised by Justice Abella was that of the Canadian Labour Congress. Since the Congress represented a large majority of organized workers in Canada, and given that its submission touched on most of the points put forward by Justice Abella in her call for input, that submission will be taken to have represented the majority views of organized labour with respect to workplace affirmative action. There were, of course, related but somewhat differing views expressed by other labour groups and these will also be referred to here.

Organized Labour's Positions

On the Nature of Affirmative Action

The Canadian Labour Congress defined affirmative action as:

> [any] program designed to remedy under-representation of groups in employment, training or career development where that under-representation is the result of an historical pattern of calculated discrimination or merely the historical neglect, apathy, and stereotyped attitudes of the majority.[2]

Despite the fact that its definition of affirmative action closely matched that of the terms of reference of the Abella Commission, the Canadian Labour Congress expressed what can only be characterized as conditional support for the establishment of workplace affirmative action through legislation. Thus, it emphasized that:

> Our brief is presented in a spirit of wanting to advance the cause of affirmative action under terms and conditions that are reasonable and acceptable to the labour movement.[3]

It added that, "...we could support affirmative action legislation under certain conditions related to process and content."[4] The main such condition was that, "The drafting of such legislation must involve the formal participation of the labour movement...."[5] This suggests that the Congress's objective here was to become an integral part of the process of developing any workplace affirmative action legislation in order to influence its content so as to make it consistent with its overall objectives. The Congress's position that there was a need for legislated affirmative action was supported by the Economists' Sociologists' and Statisticians' Association, which called for, "realistic and effective affirmative action programs against discrimination in the public service"and for the full participation of unions and workers in the setting of the goals and timetables for any affirmative action program.[6] In a variation on the foregoing positions, the brief from a local of the Energy and Chemical Workers Union dealt with employment equity from a collective bargaining perspective only. In other words, unlike the case of the Canadian Labour Congress, this group viewed the issue of workplace affirmative action as one to be decided through collective bargaining agreements between management and unions.[7]

Protecting the Seniority Principle

The protection of the seniority principle was the primary objective of organized labour in its approach to affirmative action at this time. This is reflected in the declaration by the Canadian Labour Congress that:

> Seniority is the main form of equity that a worker can accumulate through years of service. Because it has assumed a status as one of labour's key principles, we have justifiable

> concerns about possible conflict between seniority and affirmative action. This is not to say that with membership support, adjustments to seniority rights have not and could not be made.[8]

It added, however, that:

> [N]on-negotiated and arbitrary changes to seniority clauses in the name of affirmative action would be viewed as a tactic to divide union membership.

That position was endorsed by the United Transportation Union, Local 1233, which said that:

> It is our position that any imposition of goals and timetables [as part of an affirmative action program] that contravenes contract compliance is legally questionable.[9]

In this case, the reference is to contract compliance related to adherence to the terms of a collective bargaining agreement and not to measures adopted by governments to ensure that private sector firms adopt affirmative action as a condition of doing business with them.

Labour Participation in Preparing Legislation

With respect to the drafting and the content of workplace affirmative action legislation, the Canadian Labour Congress proposed that this be based on the following five principles. The first was that affirmative action be considered as a part of the human rights to be accorded to all citizens. The second was that unions be accepted as full and equal partners in the process, whose opinions and proposals were to be addressed prior to the implementation of any workplace affirmative action program. The third was that any affirmative action legislation guarantee the right of unions to negotiate such programs into their collective agreements. The fourth was that such legislation provide for the establishment of affirmative action committees in the workplace composed of equal numbers of management and union representatives. The fifth was that such legislation authorize the government to demand changes in, or to withdraw the approval of, affirmative action programs not in compliance with the legislation.[10]

Remedies

Mandatory Measures

Of the organized labour briefs which dealt with the issue of whether affirmative action programs were to be made voluntary or mandatory, slightly more than half supported the idea of mandatory measures. On this issue, the Canadian Labour Congress brief gave the idea qualified approval. It declared that:

> Our hesitation over the question of voluntary vs. mandatory affirmative action...fundamentally tied to the issue of worker/union involvement. The necessary cooperation of workers and unions will be forthcoming only if their full and equal input from the earliest stages is guaranteed.[11]

This suggests that the Congress did not wish to see affirmative action programs imposed on unions without their involvement and consent. On the other hand, the Congress did not object to having the government impose affirmative action programs on employers when it called for strict contract compliance regulations for enterprises doing business with the government so long as organized labour had a hand in preparing those regulations.[12] The United Transportation Union also supported mandatory affirmative action programs as long as these did not infringe on seniority rights.[13]

Work Sharing and Flex-time Proposals

In her second request for input into the work of her commission, Justice Abella asked respondents to comment on the desirability of instituting flexible work time systems and work-sharing as means of enhancing employment opportunities for designated group members.[14] Of the designated group briefs which commented on this, all favoured it as an option to some degree: not so organized labour. For example, the Canadian Labour Congress favoured instead the establishment of universal daycare so that women could engage in full-time, as opposed to part-time, work.[15] That position was strongly supported and articulated in greater detail in the brief of the Public Service Alliance of Canada, which asserted that:

> It is the policy of the Alliance to encourage the creation of full-time employment within the federal public service. This goal is undermined by the ability of the government, as

> employers, to hire part-time employees under terms and conditions less desirable—from the employee's perspective—than those that apply to full-time employees.[16]

It added that:

> While we are sympathetic to the special requirements of these groups of people, we believe that the need is overstated and based, in part at least, on extraneous issues. For example, women who require flexible work schedules because of family responsibilities may, in effect, want full-time work but are unable to perform it because of a lack of adequate child care.[17]

Other Matters

The Canadian Labour Congress brief did not elaborate in detail how affirmative action programs were to be administered. It did, however, note that a successful program would have to include a system to collect data on designated group members in order to facilitate the setting of objectives and the monitoring of results. In that context, it indicated that specific goals and timetables for action would have to be established. It also emphasized that as an operating principle the statistical under-utilization of designated group members ought to constitute prima facie evidence of the existence of unjustifiable barriers to employment. On the other hand, it urged that, "Rigid quota systems should be avoided."[18] The general thrust of the foregoing positions was supported in the submission by the Economists', Sociologists' and Statisticians' Association. It declared itself in favour of "...legislated measures with a) goals and timetables, b) reporting requirements, c) appeal procedures and d) sanctions and contract compliance.[19]

It should also be noted here that the concerns of the Canadian Labour Congress with respect to the introduction of affirmative action in the workplace were more broad-ranging than simply ensuring that the interests of organized labour were respected. Indeed, its brief suggested that the Congress was highly critical of the then prevailing economic and social structures and the functioning of Canadian society when it declared that:

> How can we consider employment opportunities for non-existing jobs or jobs at minimum wages, equal opportunity for parents who have no child care and affirmative action with

> employers who refuse to bear the responsibilities of cost? The first recognition must be of systemic discrimination and the traditional values and power structures that support it.[20]

Here, in addition to criticizing Canadian economic and social structures and practices, the Congress also acknowledged that the introduction of affirmative action would entail costs and urged that these be borne solely by employers. In a similar vein, the National Radio Producers Association also indicated that affirmative action would bring on greater costs. It added, however, that the social benefits flowing from affirmative action would justify them.[21]

Finally, although the majority of the briefs from organized labour favoured affirmative action as long as labour's other objectives were not compromised, none save one dealt with the issue of competence on the job. In the mythology of organized labour, competence is synonymous with seniority, that is, time served on the job. However, the two are not necessarily the same thing. Only the brief of the Canadian Airline Pilots' Association, while in general supporting the positions of other labour bodies with respect to workplace affirmative action, emphasized that any recruitment into their ranks would have to be on the basis of the "most qualified" to do the job.[22]

Employers

General

For the purposes of this discussion, the briefs submitted by the groups categorized in the Abella Commission report as "Business" and as "Crown Corporations and Government Bodies" will be categorized here as employers since the briefs of these groups dealt with the issue of affirmative action from the perspective of their role as employers. Employers and employer groups submitted a total of thirty-four briefs: fourteen by businesses or business organizations and twenty by a variety of federal Crown corporations, boards, and agencies. Most of these submissions dealt with issues in a more detailed fashion than the submissions of pressure groups or organized labour. On the other hand, like the briefs already examined, few dealt systematically with all of the points in Justice Abella's second call for input into the work of her commission.[23]

Furthermore, although the submissions by employers (both private and public sector) tended to exhibit a fair degree of consensus on most issues, they did diverge significantly on others, depending on whether the brief was submitted by a large private sector firm or government body, as opposed to the views of organizations representing smaller enterprises. Given that Crown corporations have a public purpose while private firms are designed to maximize profits, one might not have expected that the views of the large private enterprises and those of the government bodies with respect to affirmative action to resemble each other to the extent that they did. Also, whereas the briefs of the designated groups and those of organized labour reflected the aspirations of groups who stood to benefit from the introduction of affirmative action, the submissions of employers spoke to the concerns of those who were expected to ensure the success of such programs and, more importantly, upon whom the burden of cost was to fall.

Large Employers

Measures Already Taken

Perhaps the most salient feature of the briefs submitted by large employers (both private and public) was the extent to which they described the measures they had already adopted in order to enhance the participation of members of most of the designated groups identified in the Commission's mandate (women, native people, disabled persons, and members of visible minorities). For example, the submission by CP Rail noted that this company's senior industrial relations staff had gone to all divisional and regional offices as well as to their main shop locations to advise local management and supervisory staff of the measures needed to conform to the provisions of the Canadian Human Rights Act with respect to hiring. It also noted that CP Rail had developed what it termed bona fide occupational requirements for all its principal occupations and had reached an understanding with some of its unions to accord certain preferences to disabled employees. In addition, CP Rail claimed that, "certain jobs, because of their lighter than average physical requirements, have been used for placing employees, where practicable, who become physically disabled."[24] This brief also claimed that, "a review of our employment records would reveal a cross-section of most if not all visible minority groups which exist in Canada."[25]

This recital of accomplishments was not, however, limited to private sector employers. For instance, Via Rail's brief noted that:

> Via Rail strives to establish an adequate and realistic range of measures to enable women, disabled persons, native people, and visible minorities to have access to employment on an equal basis.[26]

In support of this, it noted that its internal bulletins had been revised to ensure that they were free of "sexisms" and that its human resource policy and procedures manuals had been revised to conform to the provisions of the Canadian Human Rights Act. It also noted that its external recruitment notices had been revised to conform to that Act. In addition, it indicated that special training on human rights issues had been given to its recruiters and that, "the orientation program for new employees contains a section on human rights...."[27] It also indicated that it had already set specific hiring objectives for females for its unionized front-line positions. That suggests that its unions had agreed to that kind of change. In addition, with respect to disabled persons, it noted that it had spent over $9 million to make its stations and trains more accessible to the disabled and was in the process of modifying the access to its headquarters building to make it likewise more accessible to those with disabilities.[28] Aside from noting that its management and staff "were committed to equality in employment,"[29] the brief submitted by the Canada Mortgage and Housing Corporation dealt with the issue of affirmative action in the workplace on a more abstract level and provided no specific details about its employment practices.

Concerns About the Reactions of Unions

In addition to providing details of their efforts to enhance the participation of women, native people, disabled persons or members of visible minorities in their workforces, a number of large employers also expressed concern about the reactions of their unionized employees to legislated affirmative action. Thus, for example, CP Rail noted that almost 85 per cent of its workforce was covered by collective bargaining agreements which contained specific seniority rights. In addition, they noted that:

> We do not believe our unions would be receptive at all to any...amendments [to collective bargaining agreements designed to supplant seniority rights in favour of affirmative action] and the company itself...does not believe it would be equitable to ask the unions to entertain such changes.[30]

Given organized labour's reaction to the introduction of workplace affirmative action outlined in the preceding section, and particularly its firm commitment to protecting the seniority principle, the company's evident apprehension on this point was perhaps justified.

The Via Rail brief also expressed concern about their unions demanding full weekly salaries for workers who opted for flex-time or part-time work which allowed them to work fewer hours per week than that specified in the collective bargaining agreements between the company and the unions.[31] Similarly, the submission of the Canada Mortgage and Housing Corporation noted that, "equality of employment may be in conflict with traditional union goals...." It also added that:

> To convince the management of a unionized organization to give priority to an equality in employment program without equally convincing union leaders is worse than useless.[32]

Support in Principle for Affirmative Action

The foregoing suggests that the large employers which submitted briefs to the Abella Commission generally were not opposed to affirmative action in principle. Indeed, some of the steps these employers had already taken voluntarily were in the spirit of the recommendations of the Abella Commission as well as the legislation that later flowed from those recommendations, such as the setting of specific hiring objectives for females by Via Rail. It also suggests, however, that these same employers were aware that organized labour then generally mistrusted affirmative action initiatives and were cognizant of the fact that such mistrust could well involve them in difficulties.

Groups Representing the Views of Small Employers

While the large employers which presented briefs to the Abella Commission supported workplace affirmative action in principle (albeit with reservations), those submitted by small employer organizations briefs adopted a much more negative approach. This was generally couched in terms of opposition to government interference with business decisions made by business owners.

Opposition to Government Control and Interference in Principle

Opposition to the notion of increased government control over the operations of an enterprise was perhaps most explicitly articulated by the Canadian Organization of Small Business, which declared its opposition to any:

> single minded focus on means of extending government control of the private sector and a desire to extract opportunities for some at the expense of others.[33]

It added that:

> small business will not tolerate the continuous meddling of well intentioned but ignorant officials who have no responsibility for the success or well being of the business and its employees.[34]

and that:

> Any monitoring system which depends on the circulation of large amounts of government paper work and report filing is liable to be ignored and disregarded by a large majority of small business as an irrelevant nuisance.[35]

In a similar vein, the Management Council for Responsible Employee Relations objected to what it saw in workplace affirmative action as a concerted effort by government to place most of the burden of resolving the problem of increasing minority group participation in the labour market on employers.[36] Based on the notion that affirmative action amounted to no more than preferential treatment for some, the Canadian Federation of Independent Business urged Justice Abella that:

> your final report should not recommend a mandated and legislated approach for the implementation of equality measures among the four designated groups established for the Commission.[37]

That sentiment was echoed by the Conseil du Patronat du Québec, which stressed that:

> Il serait malheureux que, pour forcer le rythme d'adaptation aux marché du travail aux nouvelles valeurs sociales, certaines entreprises se voient imposer des règles qui ne respectent pas les critères d'éfficacité essentiels à la rentabilité des entreprises.[38]

It added that:

> Aussi, tout système, programme, ou directive qui aurait pour effet de réléguer au second plan la critère de compétence est inacceptable.[39]

The above citations from the brief of the Conseil du Patronat du Québec link the idea of opposing government interference in the affairs of business with the notion that businesses must be free to choose the worker they consider to be the most qualified for the job. The notion that employers have the right to choose the most qualified individual on the basis of what is in the best interests of the firm is a theme which emerged in at least two briefs by business organizations and one by a major employer. As indicated above, that notion was supported by the Conseil du Patronat du Québec, which argued that:

> la rentabilité des sociétés d'Etat est tout aussi importante que celle des sociétés privées et elles doivent bénéficier de la marge de manoeuvre nécessaire à la réalisation des meilleures performances possible;....[40]

It also stressed that:

> Imposer, par quelque moyen que soit, la sélection d'une personne dans le seul but d'appliquer un programme d'accès à l'égalité, en sacrficiant au besoin la compétence représenterait un coût injustifé qu'une entreprise privée ou publique ne doit pas se faire imposer.[41]

That position was supported by the Canadian Federation of Independent Business, which argued that concerns about awareness, work attitudes, skills, and training were the factors considered by small business when making hiring decisions. It noted that:

> Small firms are prepared to hire and tend to do so not on the basis of ascriptive (sic) factors but on the basis of the state of the economy and the abilities, productiveness and attitudes of the worker.[42]

It added that, "Legislation and government...have tended to disregard the...significant issue of equality of [human] resources: attitude, skills, and performance...."[43] Of the major employers considered here, only Bell Canada touched on this issue by indicating that the only consideration that should be given in the hiring of an individual is that person's ability to do the job.[44]

United States Experience as Divisive

Whereas designated group briefs referred to the United States experience and legislation governing affirmative action in the workplace as models to be emulated, business groups presented a more critical picture of its effects in that country. For example, the Conseil du Patronat du Québec stressed that:

> Malgré la prudence de la loi, le concept d'accès à l'égalité s'est tres rapidement transformé en "action positive" (affirmative action): (sic) les organismes administratifs chargés de surveiller l'application de la loi on tôt fait de traduire en quotas les plans de redressemt.[45]

What this group charged essentially was that, despite the original intent of the U.S. affirmative action law, its bureaucratic administration had shifted that intent from one of requiring the implementation of equality of access to opportunity in employment to one of imposing quotas on employers. It added that this shift had coincided with a moderation of the rate of social progress of minorities in the U.S. during the period from 1968 to 1977. Likewise, the submission of the Management Council for Responsible Employee Relations also indicated that in its view affirmative action programs had been a source of much divisiveness in the U.S. It also noted that such programs had produced the greatest benefits for the most qualified and productive members of minority groups, who needed that kind of help the least.[46] The brief from CP Rail also touched briefly on the U.S. experience with affirmative action, but only to suggest that it had had an enormously adverse effect on employer-employee relations.

Thus, it can be seen that, unlike major employers, groups representing the position of small enterprises were openly critical of affirmative action as a concept and apprehensive about the effects of its implementation on their decision-making authority as employers. On the other hand, both major employers and the bodies representing small enterprises did agree on two important matters. The first was an almost universal rejection of the imposition of legislated mandatory affirmative action programs.[47] The second was the nature of the practical implications of the implementation of such programs.

Positions Common to all Employers

Mandatory Measures

In her second request for input into the work of her Commission, the first item Justice Abella asked about was the relative merits of voluntary versus mandatory affirmative programs. Unlike the majority of designated group and organized labour respondents, most of the employers and employer organizations who responded were strongly opposed to any type of mandatory programs. Thus, both CP Rail and Imperial Oil urged that such programs not be imposed. Bell Canada did not comment on this matter. Of the public sector major employers who dealt with this issue, Via Rail expressed the concern that mandatory programs tended to generate "a full range of bureaucratic rules which are often non-productive."[48] For its part, the Canada Mortgage and Housing Corporation argued for voluntary programs on the basis that, "Mandatory programs are imposed and "owned" by governments; successful voluntary programs belong to all staff."[49] It suggested as well that the flexibility inherent in voluntary programs would encourage the development of more effective staff-generated solutions to problems than would be possible with state-mandated programs. It also suggested that voluntary programs would obviate the need for bureaucratic supervision, tend to cost less, reduce the incidence of manipulation of data, and provide for more sound hiring practices.[50]

The small employer organizations were even more opposed to the implementation of mandatory affirmative action than were the major employers. For instance, the Canadian Federation of Independent Business urged Justice Abella not to recommend a "mandated and legislated approach" to ensuring equality in the workplace. It also noted that such measures conferred preferential treatment on some at the expense of others. Instead, it favoured an educational and training approach as a means of ensuring access to employment opportunities.[51] The Conseil du Patronat du Québec also opposed mandatory affirmative action on the basis that this would only burden enterprises with unjustifiable costs and in the long run lead to the imposition of hiring quotas on employers.[52] The Canadian Organization of Small Business was also against mandatory affirmative action measures. Its primary reason was that such measures were suited to the organizational realities of large firms but inapplicable to small ones. It also noted that such programs inevitably allowed civil servants to dictate to employers who should be hired as well as the standards of employment expected. They also objected to having such programs serve as the means to burden small enterprises with the costs arising from the failure of previous government policies and because of the attitudes of earlier generations.

Practical Realities of Implementation

Employers and their organizations understood full well that under a legislated employment equity regime they would be charged with the responsibility for successfully implementing any affirmative action program and, more importantly, that they would have to bear the resulting costs. They were thus keen to alert the Commissioner to some of the practical realities they faced in doing so. In its brief, Imperial Oil pointed to the small number of female engineers, geologists and technicians available as a limiting factor in their efforts to recruit more women in those disciplines into its workforce. It also claimed that many people in northern communities simply did not have the necessary basic education to be considered for employment, or even to be suitable for training. It added that qualified disabled candidates were hard to find, since most such individuals with post-secondary training were trained in the social sciences rather than in the engineering and technological skills the company required. Touching on a point made in some of the submissions by designated groups, Imperial Oil indicated that many potential disabled candidates on university campuses (where the company did much of its professional and technical recruiting) refused to identify themselves as handicapped.[53] This company also indicated that it was easier to absorb workers (including designated group members) into an expanding work force than into a shrinking one.[54] On a somewhat different topic, Bell Canada indicated that it had encountered serious difficulties in persuading its clerical workers (mostly female) to move into technical jobs and had encountered the same resistance in encouraging its technical staff (generally male) to accept moves into the female dominated field of clerical work.[55]

Although they did not emphasize the practical realities of implementing affirmative action to the extent that particular employers did, the employer groups which submitted briefs to the Commission nevertheless also referred to those realities in more or less specific ways. For example, the Canadian Federation of Independent Business noted that employers would have to be allowed to remain competitive under any affirmative action program, otherwise the enterprises would eventually fail. That view was echoed by the Conseil du Patronat du Québec. For its part, the Management Council for Responsible Employee Relations, citing American experience, expressed concern that any mandated affirmative action program would entail the imposition of quotas, thus depriving the management of a firm of the capacity to make hiring decisions strictly on the basis of the well-being of the enterprise. In addition, it noted that the introduction of workplace affirmative action inevitably increased the cost of doing business, not only in terms of equalizing salaries but also because of the added administrative requirements associated with such measures as well as the less tangible costs incurred because of the productivity, quality of work, and morale losses involved with its implementation.[56] The Canadian Organization of Small Business regarded the requirement for what it called "large amounts of government paperwork and report filing" associated with workplace affirmative action as being the major problem faced by small firms required to introduce such programs.

Other Submissions

The submissions categorized as "General" in Appendix B of the Abella Report represent the views of eight individuals and thirteen groups as disparate as the Association des enseignants du Nouveau-Brunswick, the Canadian Association for Free Expression, the Communist Party of Canada Central Committee, the Manitoba Gay Coalition, and the Personnel Department of the Government of the Northwest Territories. Generally speaking, the briefs classified under this heading tended to ignore or gloss over the issues advanced for discussion by Justice Abella in her letter of August, 1983 requesting the submissions of briefs or they express views and concerns not relevant to the mandate of the Commission. For these reasons, they are not considered here.

Summation

The foregoing is a brief summary of the views of organized labour and employer interests regarding workplace affirmative action as reflected in their formal briefs to the Abella Commission.[57] As has been shown, unlike the case of the designated groups reviewed in the preceding chapter, support for the implementation of legislated employment equity was, at best, conditional on the part of organized labour at that time, came with reservations from large employers, and was almost unanimously flatly rejected by small employer organizations. While it endorsed the notion of workplace affirmative action in principle, organized labour's objectives were to protect the seniority principle and to capture an equal place in the development of any employment equity legislation. For their part, employers and employers groups generally sought to ensure that workplace affirmative action programs would not interfere with their ability to hire, train, and promote employees on the basis of what they considered demonstrated competence, that such programs would not be administratively burdensome or cost too much, and that such initiatives would not create difficulties for them with their unions. For their part, small employer groups were categorically opposed to the imposition of employment equity, in any form.

Whereas the briefs presented to the Abella Commission by groups representing women, native people, disabled persons, and members of visible minorities (as outlined in the preceding chapter) pressed for state intervention in labour markets on behalf of their members, those submitted by employers and employer groups adopted a position more consistent with a market orientation. Organized labour's position on the issue was ambiguous in that on the one hand it supported the imposition of workplace affirmative action measures on employers but on the other was not prepared to accept any limitation on the seniority principle resulting from the application of such measures. The divergence of views between the designated groups and employers reflected in their respective briefs suggests that Bradford's dual policy discourses[58] were still intact at the policy development level, with one pressing for an interventionist role for the state and the other promoting market solutions for policy problems. Also, whereas designated group briefs justified their demands for state intervention on the basis of ensuring equality and fairness in the workplace, employer submissions reviewed in this chapter emphasized issues of cost and efficiency in advocating the limiting of that intervention.

The following chapter examines in detail the Report of the Commission on Equality in Employment crafted by Justice Abella, which formed both the philosophical justification and implementation plan for the introduction of workplace affirmative action in Canada.

1. Report of the Commission on Equality in Employment, (Ottawa: Minister of Supply and Services Canada, 1984), Appendix B, p. 289.

   Hereafter, this is referred to as the Abella Report.

2. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Canadian Labour Congress."

3. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File "Canadian Labour Congress."

4. Ibid.

5. Ibid.

6. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Economists', Sociologists' and Statisticians' Association."

7. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Energy and Chemical Workers Union, Petro-Canada Refinery, Local 593.

8. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Canadian Labour Congress."

9. National Archives of Canada, RG33-133(84-85/395). Vol. 4, File, United Transportation Union, Local 1233."

10. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Canadian Labour Congress."

11. National Archives of Canada, rg33-133(84-85/395), Vol. 3, File, "Canadian Labour Congress."

12. Ibid.

13. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "United Transportation Union, Local 1233."

14. Abella Report, Appendix A, p. 274, item 7.

15. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Canadian Labour Congress."

16. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Public Service Alliance of Canada."

17. Ibid.

18. Ibid.

19. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Economists', Sociologists' and Statisticians' Association."

20. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Canadian Labour Congress."

21. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "National Radio Producers Association."

22. National Archives of Canada, RG33-133(84-85/395), Vol. 3, File, "Canadian Airline Pilots' Association."

23. Abella Report, Appendix A, pp. 273-274.

24. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "CP Rail."

25. Ibid.

26. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Via Rail."

27. Ibid.

28. Ibid.

29. National Archives of Canada, RG33-133(84-85/395), Vol. 10, File, "Canada Housing and Mortgage Corporation."

30. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "CP Rail."

31. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Via Rail."

32. National Archives of Canada, RG33-133(84-85/395), Vol. 10, File, "Canada Mortgage and Housing Corporation."

33. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Canadian Organization of Small Business."

34. Ibid.

35. Ibid.

36. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Management Council for Responsible Employee Relations."

37. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Canadian Federation of Independent Business."

38. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Conseil du Patronat du Québec." It should be emphasized here the the Conseil du Patronat du Québec does in fact represent both large and small employers but in this case this organization supported the positions taken by small employer representatives with respect to the introduction of legislated workplace affirmative action.

39. Ibid.

40. Ibid.

41. Ibid.

42. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Canadian Federation of Independent Business."

43. Ibid.

44. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Bell Canada."

45. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Conseil du Patronat du Quèbec."

46. It is not the intention here to assess the merits of the employer group claims about the effects of affirmative action legislation in the United States but rather to indicate that the issue was raised. Still, it cannot be denied that the issue has been controversial in the United States for many years. For a more detailed examination of this controversy see especially The Affirmative Action Debate, ed. Steven M. Cahn, (New York: Routledge, 1995). as well as The Affirmative Action Debate, ed. George E. Curry, (Reading, MA: Addison-Wesley Publishing Company Inc., 1996). For a business oriented recent opinion, see also "Lowering the Bar," Dan Seligman, Forbes Magazine, September 20, 1999, pp. 72-74.

47. Of the briefs from employer groups only Air Canada and the Agricultural Stabilization Board (both government agencies) supported the imposition of mandatory affirmative action measures.

48. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Via Rail."

49. National Archives of Canada, RG33-133(84-85/395), Vol. 10, File, "Canada Housing and Mortgage."

50. Ibid.

51. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Canadian Federation of Independent Business."

52. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Conseil du Patronat du Québec."

53. Employer concerns on this point were well founded. As will be evident later, this matter surfaced as an issue with respect to the administration of the legislation by employers who complained that some of those hired under the terms of the Act refused to identify themselves as members of a designated group.

54. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Imperial Oil Limited."

55. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Bell Canada."

56. The definition of costs by the Management Council for Responsible Employee Relations is to be found not in the body of its submission but as footnote number 14 of that brief.

57. It should be noted that many of the groups who submitted briefs to the Abella Commission also had representatives who met personally with Justice Abella as part of her schedule of meetings with groups and individuals. Groups such as the National Action Committee on the Status of Women, the Union of Ontario Indians, the Canadian National Institute for the Blind, the National Associations of Canadians of Origins in India, the Canadian Federation of Independent Business, and the Canadian Labour Congress, amongst many others, all both had representatives meet directly with Justice Abella as well as submitting formal briefs to her Commission.

58. Neil Bradford, Commissioning Ideas: Canadian National Policy in Comparative Perspective, (Toronto: Oxford University Press, 1998), p. 62.

Chapter Five

PLANNING CHANGE

Introduction

The mandate of the Abella Commission was to develop a coherent philosophy and supporting implementation ideas for introducing workplace affirmative action in Canada. It was from the assumptions about labour market practices and prevailing ideas about the inequities they generated, from the not always consentient recommendations of her advisors and researchers, from the opinions and views of the literally hundreds of individuals who met personally with Justice Abella, and from the positions taken and action advocated by the groups which submitted briefs to the Commission, that the Commissioner crafted her report . In that report, Justice Abella provided both a coherent framework philosophy and feasible implementation proposals favouring state intervention in Canada's labour markets.

This chapter reviews and summarizes the premises, content, and recommendations of the Report of the Commission on Equality in Employment. Particular attention is paid to the Report's definitions of "employment discrimination," "systemic discrimination," and "employment equity," as these refer to the fundamental assumptions about the role of the notion of equality in allocating employment benefits in Canada, the nature of labour market practices found in its Terms of Reference,[1] and of the substantive ideas which emerged from the work of the Royal Commission on the Status of Women in Canada. The material presented here illustrates the manner in which these ideas were codified into a coherent plan for action, whose claims for consideration, in the view of the Commission, merited state intervention and whose were to be ignored, and how this view contrasted sharply with the public policy discourse taking place at the same time under the mandate of the MacDonald Commission, as described by Bradford.[2]

The Organization of the Report

The Report is organized into two parts. The first part is labelled as "The Case for Equality" and sets out the Commissioner's assumptions, arguments, and the views of the target group representatives on their preferences for measures to increase the participation of their members in every aspect and at all levels in all workforces. The second is designated as "Implementing Equality." It deals with those factors Justice Abella considered as the impediments to equal treatment in the workplace faced by designated group members, including matters related to education, training, and child care. It also sets out her recommendations for promoting equality in the workplace. The balance of the Report is taken up with a summary of the Commission's recommendations, six appendices, and a comprehensive bibliography.

For the purposes of this investigation of the role and influence of royal commissions on the development of public policy in Canada, the following review of the Abella Report will focus first of all on the role that the principle of equality was to play in the allocation of employment opportunities, on the fundamental assumptions about labour market practices in Canada and of its effects on target group members that form the foundation for its recommendations. Second, in order to illustrate which groups were most influential in shaping the substance of the Report, a brief summary of the Report's account of their views is provided. Lastly, the Report's proposals for action are reviewed and analyzed. The Report's portrayal of designated group participation in the labour force at the time the Report was prepared is not in question and is, in any event, beyond the scope of this investigation, as are the parts of the Report which deal specifically with education, training, and child care issues. These will not be dealt with here.

Fundamental Assumptions

In crafting her report, Justice Abella brought more to it than a strict adherence to the spirit of the terms of reference setting up her commission, as well as generally following the principles enunciated by the Bird Commission with respect to improving the experience of women in the labour market.[3] She also brought to her task a fundamental conviction of her own, which features prominently in her report and which she elaborated on later in a paper prepared for the Third Annual Conference on Human Rights and the Charter, sponsored by the federal Department of Justice in 1991. This was the contention that inequality of outcome in the labour market for designated groups was in and of itself an expression of workplace discrimination.[4] This, in turn, is grounded in the notion that "equality is realized in the reduction of inequality, and that inequality is the existence of discrimination" and that staffing procedures which have an unequal effect on target groups are prima facie evidence of workplace discrimination.[5] Moreover, the Terms of Reference which established her commission can be traced back to the ideas about the condition of women in the workplace and how this could be ameliorated, first articulated by the Bird Commission and explored in detail in Chapter Two. These Terms of Reference not only assumed the existence of discrimination in the workplace against members of the specified groups but also postulated the notion that state intervention was required to correct this. As will be seen, it was a position adopted without reservation in the Commission's report. The notion that labour markets in Canada did not treat target group members fairly is explicitly enunciated in the following statements of principle in the Abella Report:

> [W]hat is happening today in Canada to women, native people, disabled persons, and visible minorities is not fair.[6]

and:

> It is not fair that many people in these groups have restricted employment opportunities, limited access to decision-making processes that critically affect them, little public visibility as contributing Canadians, and a circumscribed range of options generally.[7]

This suggests that Justice Abella had concluded that workplace discrimination, both overt and systemic, had existed and continued to exist in Canada's labour markets. She adopted this position even though one of her consultant experts had advised her that there was no statistical data to support the position that Canadian employment patterns were necessarily always the result of discrimination, but could also arise because of personal choice or preferences, differences in education or training, or linguistic abilities.[8]

Employment Discrimination and Employment Equity Defined

The Report grounds its recommendations for action (examined below) on the twin notions of employment discrimination and employment equity, with the second to act as a corrective to the first. It defines employment discrimination as:

> [P]rocedures or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics.[9]

It adds that:

> It is not a question of whether this discrimination is motivated by an intentional desire, or whether it is the accidental by-product of innocently motivated practices or systems. If the barrier is affecting certain groups in a disproportionately negative way, it is a signal that the practices that lead to this adverse impact may be discriminatory.[10]

It labels this kind of barrier as "systemic discrimination" in the workplace and defines it as:

> [T]he impact of employment practices on the employment opportunities of designated group members. The impact, rather than the intention behind the behaviour or employment practices, is what defines systemic discrimination.[11]

The Report defines "affirmative action" or "employment equity" (it uses these terms synonymously in this instance) as:

> [C]omprehensive planning processes "for eliminating systemically induced inequities and redressing the historic patterns of employment disadvantage suffered by members of target groups."[12]

and characterizes what it terms "systemically induced inequities" in the citation above as "systemic discrimination," a term it borrowed from a report on issues associated with the development of labour market policies in the 1980's prepared for the federal government.[13] It also asserts that such systemic discrimination requires what it terms as "systemic remedies"[14] and notes that what is important in any employment system in terms of ensuring equality are its results,[15] stresses the importance of accommodating differences in the workplace, and declares that the failure to do so is discrimination.[16]

In an approach to workplace conditions consistent with the assumptions explicit in the mandate of the Commission and in line with the themes regarding this issue enunciated by the Bird Commission, the Report asserts that a system to deal with workplace discrimination based on "individual rather than group remedies, and perhaps confined to allegations of intentional discrimination, could not deal with the pervasiveness and subtlety of discrimination."[17] It adds that "the inexorable, cumulative effect on individuals or groups of behaviour that has an arbitrarily negative impact on them is more significant than whether the behaviour flows from insensitivity or intentional discrimination."[18] It also asserts that employment systems in Canada are designed exclusively with white males and their perceptions in mind.[19] The Report also emphasizes that Section 15(2) of Canada's Charter of Rights and Freedoms allows for state action that treats designated group members in a preferential manner and therefore does not amount to discrimination in law.[20] In other words, in the view of the Commission, the Charter legitimizes the application of special measures favouring those deemed disadvantaged in the county's labour markets by reason of their being statistically under-represented in any area or at any level in an enterprise. It adds as well that courts ought to "find as 'disadvantaged' all individuals who are members of a group found to be disadvantaged."[21] It sums up with the statement that, "It is not a question of whether we need regulation in this area but of where and how to apply it.[22] This means that for the Commission, employment equity is "a process of redistributive justice."[23]

By defining workplace discrimination as "systemic" the Report alters the meaning of the term "discrimination" from that of describing a volitional act deliberately engaged in to one of portraying the results flowing from an administrative procedure or system. In doing this, it also shifts the locus of the burden of proof of discrimination from the individual (difficult to do) to that of the group (statistically easy to quantify). The second is a much easier task, given the Report's premise that the absence of parity between the proportion of target group members in an enterprise and their numbers in the labour force is prima facie evidence of workplace discrimination. Moreover, the Report also defines the introduction of an employment equity regime in an enterprise as being no more than the implementation of a planning process, an event akin to what a business might to when contemplating to change its product or service lines. What these definitions also do, however, is to downplay the magnitude of the restructuring of labour markets in Canada called for in its recommendations for action. Nowhere in the Report is the issue of this restructuring recognized or acknowledged as such.

The coining of the term "employment equity"

Perhaps one of the more important elements in the success of the Abella Commission in changing the course of public policy in Canada was Justice Abella's coining of the term 'employment equity.' The suggestion to employ any term but 'affirmative action' appears to have come from an Australian public servant, who advised the commission that use of the American term 'affirmative action' had negative connotation associated with imposed quotas which tended to generate opposition to such measures.[24] Justice Abella heeded the advice. Her genius was to coin the term ‘employment equity’ as the label for positive state intervention in the labour market in place of the then commonly used ‘affirmative action’ to refer to “programs of positive remedy for discrimination in the Canadian workplace.”[25] In her report, Abella candidly acknowledged that the reason for this was to neutralize the expected negative reaction to any use of the term ‘affirmative action’ with its connotations of “interventionist government policies.”[26] It was an inspired choice. The term ‘equity,’ with its connotations of fairness and justice, presented what was portrayed by its opponents as an unwarranted ‘affirmative action’ state intrusion into the labour market instead as a government effort to bring that fairness and justice to the workplace and, as intended, no doubt not only helped deflect some of the opposition to the imposition of legislated workplace affirmative action but also provided its supporters with a convenient and effective promotional slogan. Proof of the term’s attraction for political decision makers came with its immediate adoption by the government, and particularly by Flora MacDonald, the Minister of Employment and Immigration in the Mulroney administration, and its emergence as the official name of the ensuing legislation.

The Commission’s Position on the Employment Problems of Designated Groups

The Report correctly notes that women’s, native people’s, disabled persons’, and visible minority groups across the country had requested "government intervention" so as to increase their participation in the workforce, given that in their view traditional anti-discrimination statutes and voluntary measures had not been effective.[27] It also asserts that these groups felt that the "elimination of discriminatory workplace barriers should be required by law...." and suggested that its enforcement should be entrusted to a body independent of government.[28] In addition, the Report indicates that these groups wanted governments to extend employment equity measures to apply to the private sector as well as to governments.[29] It also notes that they did not believe that public education alone was an effective remedy for their difficulties and that they wanted the public to be required to work with members of their groups.[30] These positions were interpreted by the Commission as a call for the establishment of administrative agencies with powers similar to those of human rights commissions to regulate labour markets in Canada. These positions were also consistent with that taken by Justice Abella in her call for written submissions.[31]

The Report further indicates that the opposition to the status quo of employer staffing practices or to the introduction of voluntary measures expressed by groups representing women, native groups, disabled persons and members of visible minorities was based on what they saw as the success of state-directed affirmative action in the United States.[32] It also notes that these groups referred to the success of the federal government's positive action to ensure that Francophones were represented in its public service in direct proportion to their presence in the general population as an example of what they believed should be legislated in their own favour.[33] This suggests that there is some validity to the "slippery slope" argument that when the state accords some benefit to one group of citizens, others are bound to demand similar treatment.

The Report notes as well that the manner in which women are acculturated in Canadian society has an important bearing on what it considers their lack of success in the workplace. Here it cites the educational choices made by women because of that acculturation, the paucity of educational and training opportunities afforded women returning to the workforce, inadequate childcare provisions, tax laws and pension provisions which treat women unfairly, and the manner in which society perceives the role of women as reasons why women are unable to achieve equal status with men in the workplace.[34] This position conforms to Justice Abella's contention that workplace discrimination is not only the result of acts of volition by employers but rather occurs because of the systems and procedures employed which have the effect (perhaps unintended) of denying women access to jobs, training, and promotion in direct proportion to their numbers in the labour market.

The Report also notes that for native groups a primary concern is the determination to take an active role in decision-making which affects them, in areas such as education and training. It adds that native people want their cultures and traditions respected and to be served by governments in their own languages. It also indicates that they look for financial assistance for native-controlled economic development as a way of enhancing their employment opportunities. In addition, it also emphasizes that native groups believe that existing employment training programs and services are ineffective, primarily because they are too short to do any lasting good and because they are held away from native communities. The report also captures to some extent the sense of alienation and dissociation from the larger society articulated by native group representatives.[35] However, native group aspirations are not totally reflected in the Commission's recommendations in that none of them directly address the issue of economic development funding controlled by, and for, native groups, arguably their main demand.

With respect to the handicapped, the Report indicates that given the variety of impairment conditions, it is imperative that each case be dealt with on an individual basis. However, it does not allow for employer discretion in the matter. It emphasizes that groups representing the disabled believe that employers ought to be required to adjust workplace access and procedures so as to allow handicapped individuals to participate in the labour market. The Report also indicates that disabled persons groups stressed the need for employment training services designed specifically for them, as well as for technical aids to allow them to function effectively on the job. On this point, and this point only, the Report suggests that tax incentives for employers be employed to encourage this. It emphasizes as well that disabled individuals would naturally screen themselves out of unsuitable jobs, but provides no evidence to support this. It adds that more reliance ought to be placed on local institutions to act as advocates for disabled workers, and that greater employment of the disabled would inevitably teach able-bodied employees the value of the contribution of disabled workers.[36]

The Report also indicates that for visible minority groups the problem is one of racism in the workplace. It also stresses that for many of these groups part of the problem is the inadequacy of the facilities and services needed to integrate immigrants into Canadian life. It accepts their contention that this results from the paucity of language training services, particularly the fact that these are often restricted both in scope and availability. It agrees that for these groups, another part of the problem is the perception that skilled and professional immigrants face insurmountable difficulties in having their qualifications recognized in Canada, thus restricting their employment opportunities. The complaints that professional immigrants face difficulties and delays in receiving Canadian accreditation in their professions is a long-standing one. An account of the manner in which one professional body in Canada deals with the issue of evaluating foreign professionals will be found in Appendix C. A third problem identified by these groups is the lack of visible minority representatives in the counselling and service delivery programs they depend upon. The Report adopts the position that the problem faced by visible minority groups in the labour market "is essentially one of racism...."[37] and advocates the enactment of legislation to correct this. In addition, it also recommends the establishment of special measures to correct what it characterizes as racism.[38]

To summarize the Report's treatment of designated group positions on employment equity, it is clear that these groups understood this notion in sometimes widely divergent ways. However, it is also clear that despite these disparate views they were almost universally united in their opposition to the introduction of a voluntary affirmative action regime and in their virtually unanimous support for legislation requiring mandatory compliance by employers for measures favourable to those they represented. Moreover, while acknowledging that no overall consensus emerged from the positions taken by target group representatives, the Report nevertheless contends that where no consensus is possible on some policy issue, governments have an obligation to provide the leadership necessary to rectify the inequities it argues were to be found in the country's labour markets.[39]

The Report's Treatment of Employer Concerns

While clearly sympathetic to the interest of target groups on employment equity, the Report accords the concerns of employers rather short shrift. It glosses over or ignores the economic or administrative issues expressed by Canadian employer representatives with respect to staffing their enterprises under the kind of legislated workplace affirmative action regime it recommends. This position is best illustrated by the following statements:

> The marketplace is a convenient altar upon which many needs are sacrificed. The economically and strategically powerful elements in society have in the past not exhibited any great ability to isolate and address the discrimination women and minorities have experienced in employment, particularly when economic imperatives urged insensitivity. It is unreasonable to expect that this will change in any significant way unless directed by statute to concentrate on the problem.[40]

And:

> The pursuit of policies that permit everyone who so wishes access to the realization of his or her full employment potential is not one that ought to be tied to an economic divining rod. The most positive way to prevent further irreversible human and financial costs to these four groups from accumulating is to impose employment equity.[41]

From this it is clear that Justice Abella viewed the employment of designated group members as an instance where economic or administrative considerations were to be subordinated to the need for equality of result in the labour market. This is a juristic approach. As Morton and Pal have pointed out in their review of the differing decision-making logic employed by administrators (public or private) and jurists, costs are of no importance to jurists where the protection of legal rights is involved[42] This position is in keeping with Gold's maxim that, "When important rights are at stake, arguments of efficiency cannot be allowed to prevail."[43] On this point, Gold reiterated Horowitz's earlier dictum that"if rights exist they are not bounded by considerations of cost."[44] Given her beliefs about the application of the notion of equality in the workplace, her assumptions about the nature of labour markets in Canada, her terms of reference, her training as a lawyer, and her experience as judge, it is not surprising that Justice Abella considered that protecting legal rights in the workplace was more important than cost effectiveness or administrative efficiency.

Implementing Employment Equity

The Report recommends the imposition of a legislated mandatory system of workplace affirmative action, which it labels as employment equity. It also specifies what this ought to entail for employers. For example, it calls for a clear indication of executive support for such measures, the appointment of senior managers accountable for its implementation, the provision of sufficient resources for its successful implementation, and the establishment of appropriate labour-management consultative processes in the enterprise. It also calls for pro-active measures to identify and remove discriminatory barriers in the firm's hiring, training, promotion, and wage policies, as well as the development of corrective systems and recommends the setting up of special remedial measures to nullify the effects of previous discrimination, along with establishing quantifiable goals so that designated group members are represented throughout the enterprise in direct proportion to their numbers in the labour force.[45] The Report also emphasizes that any employment equity program be applied on a "no-fault" basis. By this it means that no evidence of overt discrimination need be proven for a determination that employment discrimination exists in an enterprise

Consistent with the views of target groups, the Report also rejects out of hand the idea of voluntary affirmative action. Of the merits of that approach, it asserts that:

> It is difficult to see how a voluntary approach, that is, an approach that does not include an effective enforcement component, will substantially improve employment opportunities for women, native people, disabled persons, or visible minorities.[46]

The Report also stresses that in the United States, "Government action had successfully resulted in improved participation rates for minorities in every occupational category."[47] Although widely accepted as accurate, the idea that the U.S. government's affirmative action programs resulted in significant increases in the labour market participation of that legislation's designated groups has been questioned. Sowell, for instance, has argued that that legislation has had little or no effect on "black-white income ratios or occupational representation."[48] In addition, the notion that mandatory workplace affirmative action inevitably results in the proportional representation of members of designated groups in the labour market was also challenged by the Management Council for Responsible Employee Relations in its formal submission to the Abella Commission.[49] The Report also questioned the value of public disclosure in encouraging employers to introduce workplace affirmative action programs, a strategy that was later adopted by the Mulroney government in structuring its employment equity legislation.[50] Finally, it also cites the Canada Employment and Immigration Commission's experience of asking more than 1,400 employers to take that kind of initiative, with only 71 having agreed to do so between 1979 and 1984.[51] This indicates that Justice Abella saw more merit in the positions advanced by the vast majority of pressure groups, which favoured the imposition of legislated workplace affirmative action, than she did in those of employer representatives.

The Report recommends the enactment of a law which would require that all federally regulated employers and the federal government's own departments, agencies, boards, and Crown corporations establish workplace affirmative action.[52] By recommending that private sector employers be included in any legislation imposing workplace affirmative action, Justice Abella clearly exceeded the bounds of her Terms of Reference.[53] These Terms of Reference called for the Commission to examine the employment opportunities for women, native people, disabled persons, and members of visible minorities in eleven named Crown Corporations. They also mandated the Commission to solicit the views of those Crown corporation managements, employees, and employee associations, as well as those of representatives of the target groups specified in those Terms of Reference. In addition, the Commission was authorized to consult with "any other person or group"[54] interested in workplace affirmative action. But nowhere in those Terms of Reference was there any suggestion that the Commission's mandate was to include recommendations aimed at private sector employers.[55] Justice Abella justified this departure from her Terms of Reference by arguing that in order to properly assess the employment practices of the eleven Crown corporations called for in the Commission's Terms of Reference, it was necessary to place these practices "in the context of what other Canadians do, believe, or expect."[56] As will be seen in the following chapter, the government accepted this line of reasoning and crafted its legislation so as to cover all federally regulated private sector employers who employ more than one hundred workers.

Specifically, the Report recommends that such legislation incorporate the following features: (1) the requirement that federally regulated employers eliminate their discriminatory employment practices, (2) that these employers collect data on the participation rates, occupational distribution, and incomes of designated group members in their employ and file this data with state agencies, and (3) that the state establish effective enforcement mechanisms[57] (without at that point specifying precisely what these mechanisms should entail, although the Commission does later provide four detailed enforcement options for the government's consideration). It also proposes that employers be required by law to set up what it terms employment "equity committees" consisting of management, union, and designated group representatives in their enterprises.[58]

First, with respect to the recommendation that employers eliminate discriminatory practices, the Commission relied almost solely on the positions taken by designated group representatives, particularly women's groups.[59] Moreover, these submissions were virtually unanimous in proposing that mandatory employment equity programs be imposed on employers. It ignores the submissions by employers, which favoured some sort of voluntary regime.

Second, with regard to its recommendation that employers be required to collect comprehensive and extensive personal data on their employees in order to facilitate the administration of workplace affirmative action legislation, the Report calls for such data to include the participation rate of members of these groups, the salary range for each occupation in the firm, the numbers of hirings, promotions, terminations, lay-offs, and training and educational leaves provided members of these groups. It also recommends that employers be solely responsible for not only collecting such data from their workforces but also for organizing this into a format acceptable to a state enforcement agency and for filing it annually with that body.[60] In addition, it calls for revisions to the Canada Statistics Act to permit Statistics Canada to analyse the data supplied by employers and to compare this with demographic data in its possession. As well, it proposes that the occupational categories used by Statistics Canada be expanded so as to permit a more precise determination of the distribution of target group members in the workforce. It also calls for that Act to be amended to permit employers' data to be made public through the enforcement agency it recommends be established.[61] These recommendations are in keeping with, and support, the notion that the absence of statistical parity between the number of target group members in an enterprise and their distribution in the labour market is evidence of employment discrimination.

Third, the establishment of an effective enforcement agency to oversee the administration of legislated employment equity is one of the Abella Commission's major priorities. In support of this, the Report recommends setting up a workplace affirmative action enforcement agency fully independent of government. It adds that such an agency must be provided with adequate staff familiar with "human rights issues" and with the necessary financial resources to be effective.[62] Significantly, the Report does not recommend that this enforcement agency also have staff familiar with the administrative and operational concerns of employers. Specifically, it recommends that this enforcement agency be given the authority to formulate and issue employment equity guidelines as well as to monitor employers:

> not only for improvements in the participation rates by group but also for improvements in distribution throughout occupational classifications and pay levels, by designated group.[63]

The Commission's Enforcement Models

The Report also provided four models of enforcement mechanisms for consideration by government. The first called for a dual responsibility for the Canadian Human Rights Commission and an independent new agency. Under this model, the Human Rights Commission would be responsible for issuing employment equity guidelines, collecting, reviewing and assessing data provided by employers, investigating and adjudicating complaints of workplace discrimination; enforcing contract compliance, and referring disputes for settlement to the conciliation services provided by the independent agency.[64] The proposed new agency would be responsible for ongoing consultation with business, labour, and target groups with respect to employment equity issues; providing a consulting capacity to employers on implementing workplace affirmative action; and providing consultant and conciliation services to the Canadian Human Rights Commission.[65]

The second model provides for a completely new independent agency to deal exclusively with all aspects of employment equity. Specifically, the Report recommends that this agency furnish information to, as well as establish employment equity guidelines for, employers, collect appropriate data from employers, review and assess employer data, investigate employer practices to ensure compliance with the legislation, enforce contract compliance, and refer disputes to independent conciliators or to binding arbitration.[66]

The third model, which in some respects resembles the first, calls for two already established state agencies to share the responsibility for administering an affirmative action regime. Under this model, the Canadian Human Rights Commission and the Canadian Labour Market and Productivity Centre would share responsibility as follows. The Canadian Human Rights Commission would be responsible for issuing employment equity guidelines; collecting, reviewing, and assessing the data taken from employers; investigating and adjudicating complaints of discrimination, and enforcing contract compliance. For its part, the Canadian Labour Market and Productivity Centre would be responsible for acting as a consultant to the

Canadian Human Rights Commission in developing affirmative action guidelines as well as consulting with employers, unions, and target groups on employment equity issues.[67]

The fourth model also involves a joint responsibility approach. In this, the Canadian Human Rights Commission would be responsible for issuing employment equity guidelines collecting, reviewing, and assessing data taken from employers, investigating and adjudicating disputes, and enforcing contract compliance. In addition, Canada Labour Code inspectors would be charged with monitoring the employment practices of employers for violations of the employment equity legislation and referring violations to the Human Rights Commission for action.[68]

As the brief outline of the four enforcement options presented above indicates, Justice Abella's clear preference for the enforcement of any workplace affirmative action legislation was for the creation of enforcement institutions based on human rights considerations rather than on means of improving the functioning of labour markets in Canada. Thus, the first, third, and fourth options assign the Canadian Human Rights Commission the role of final arbiter on workplace affirmative action issues. Even though the second option calls for the creation of an entirely new institution to enforce any employment equity legislation, the final authority over the employment practices of employers would be vested with the Canadian Human Rights Commission.[69] However, there is nothing in these enforcement models which calls for the involvement of any institution with an appreciation for, and concerned with, improving the workings of labour markets in Canada.

The Commission's Treatment of Organized Labour and Employer Concerns

With respect to the concerns of organized labour that workplace affirmative action could endanger the principle of seniority, the Report recommends that initially this be resolved through the collective bargaining process. It does not, however, rule out the possibility that legislated limitations to seniority could be required in some cases so as to ensure that the requirements of any employment equity program prevail.[70] It also suggests that the problem could be resolved by employer initiatives such as enterprise-based seniority, enhanced seniority for target groups, work-sharing plans favouring designated groups, and proportional or rotational lay-off systems to override the seniority benefits of long-service non-target group employees.[71]

The Report does acknowledge that private sector employers generally objected to mandatory affirmative action programs because these tended to ignore economic and enterprise realities. It also recognizes that employers stressed that the costs to firms could outweigh the benefits attributed to such programs. And it concedes that employers urged the granting of tax incentives to encourage compliance instead of mandatory measures as well as an incremental approach to implementation to take into account of economic conditions and the supply of qualified workers. Nevertheless, the Report categorically rejects tax or other incentives as inappropriate, because they are capital-based and thus inapplicable directly to employment and because they would not generate additional employment.[72] While it might be argued that the generation of employment is itself a laudable public policy objective, this formed no part of the Commission's Terms of Reference. The reference to the generation of employment as an objective was borrowed directly from a chapter devoted to the possible use of incentives to improve the operation of labour markets in Canada contained in a report prepared for the then Minister of Employment and Immigration. That reports' primary purpose was to advise the Minister on options for government policies aimed at improving the operation of labour markets, including the use of incentives of various kinds (although the report does include an exhaustive examination of the participation rates of target groups in those labour markets).[73] In this instance, the Commission conflated the separate objectives of improving the labour market and creating a representative workforce.

The Report recommends the introduction of contract compliance measures in order to capture those private sector firms not otherwise subject to federal regulation but doing business with the federal government in order to ensure that they complied with the government's employment equity legislation. In practice, this means that the government refuses to purchase goods or services from, or issue licenses to, firms which fail to implement affirmative action programs acceptable to the government. The Report also urges that provincial governments enact legislation comparable to that proposed for the federal government[74] and advocates that employers be required to provide paid educational and training leaves to any employee and further that a "fair proportion" of such leaves be set aside for target group members, regardless of who the enterprise might consider most appropriate for this kind of support.[75]

With respect to employer willingness to adopt affirmative action measures, the Report indicates that the heads of the designated Crown agencies were in favour of government supervision of their workplace employment practices. It does, however, acknowledge that at least part of the reason for this was the fear of private sector competition if only public sector employers were to be subjected to employment equity.[76] This suggests that these Crown Corporation heads were prepared to give up some of their autonomy over employment matters on condition that their private sector competitors be compelled by law to do the same.

Summation

The Abella Commission's recommendations called for a basic restructuring of the institutional practices used to allocate employment opportunities in Canada. They were grounded in a blend of Justice Abella's concept of equality, as this was to be applied to the workplace, the Terms of Reference which established her commission, the substantive ideas about workplace practices and conditions as these affected women advanced by the Bird Commission a decade and half earlier, and by the positions advanced by target group representatives. Absent from this mix were the concerns of employers, and to a limited degree, those of organized labour. The effect of this blend of influences in the development of the Commission's report and recommendations is reminiscent of Heclo's observation that "interests tell institutions what to do; institutions tell ideas how to survive; ideas tell interests what to mean."[77] It conforms to Bradford's notion that while ideas are sufficient for generating change, they require the support of interests and institutional guidance in giving them substance if the change is to take root.[78] It should be noted, though, that interests and institutions are composed of individuals, some of whom are in positions of influence and power, and whose predilections may well have a significant impact on the positions taken by those very interests and institutions.

Specifically, the Commission's recommendations were based on the notion that the absence of parity between the proportion of designated group members in an enterprise and their distribution in the labour market was prima facie evidence of workplace discrimination. In addition, they are consistent with the Bird Commission's assumptions that: labour markets systematically discriminate against women, that it is the experience of the group, not that of individuals, which is the best indicator of the presence of discrimination in the workplace; that statistical non-parity in the numbers of women and the proportion they occupy in the larger society is evidence of discrimination; that society has an obligation to provide special measures to remedy such discrimination; that labour markets are ineffective mechanisms for ensuring equality on the job; and that state regulation is the only effective means of ending workplace discrimination. While the Report reflects to a significant extent the positions taken by target group representatives in their formal submissions to the Commission (examined in Chapter Four), particularly those representing women, at the same time it either ignores or dismisses as irrelevant the concerns and interests of employers. Moreover, although the Report treats the views of organized labour more sympathetically than it does those of employers, these remain subordinate to those of the groups representing women, native people, disabled persons and visible minorities in this Report.

The Abella Report considers the experience of designated groups (not individuals) in the labour market as an example of systemic discrimination. It supports this position with detailed comparisons of income earned, unemployment rates, and the participation rates of target groups in the labour market in relation to that of white males.[79] On the basis of these comparisons, it defines employment discrimination as the absence of statistical parity in the entire range of labour market conditions between white males and all others. As a remedy, it advocates the establishment of legislated workplace affirmative action under which "no prior finding of discrimination is necessary."[80] That is, it advocates the setting up of a regime where the determination of whether or not an employer is to be found guilty of discrimination on the job is one which officially ignores the existence of discriminatory practices and relies instead on standards of statistical parity to make that determination. The Report also recommends that all members of designated groups be considered disadvantaged by the courts for the purposes of administering affirmative action laws and thereby entitled to benefit from such programs, regardless of their individual circumstances.[81] What Justice Abella proposed here is that the courts, rather than legislative bodies, become much more pro-active in supporting her contention that the absence of parity between the proportion of designated group members in an enterprise and their distribution in the labour market is evidence of workplace discrimination. This is a view she has advanced elsewhere.[82] However, as Dunbar has noted, while it is the normal function of the courts to eliminate purposeful acts of discrimination against individuals or groups, it is not their traditional role to declare that individuals possess, by virtue of membership in a class or group, rights to special benefits.[83] What Dunbar seems to imply here is the judicial function is to interpret the law, not to promote any particular ideology or point of view.

It should also be noted that the assumptions underlying the Abella Commission Report and the effect of its recommendations, while generally reflecting the declared interests of all designated groups, most closely reflect the positions taken by women's groups, and to a lesser extent, the concerns of groups representing disabled persons and visible minorities. All, though, looked to state intervention in the labour market to correct the problem. That is, all were willing to allow the state to rectify an injustice and ensure equality in the workplace. These are essentially post-materialist values.[84] Their positions represent an intent to redistribute wealth rather than to create it. On the other hand, although native groups, like the other pressure groups, conceived of the experience of their members in labour markets as discrimination, their solutions tended to emphasize native controlled economic growth rather than the single-minded concern with wealth redistribution called for by those other groups. In this respect at least, the views of native groups tended to reflect materialist rather than post-materialist values. On the other hand, it is also clear that the native groups' support for affirmative action were grounded in the thoroughly post-materialist notions of promoting respect for their cultures, languages, and traditions.

As called for in Bradford's model of a successful royal commission, the Abella Commission Report provided a coherent justificatory philosophy along with a set of implementation proposals consistent with that philosophy for a change in public policy in regulating the allocation of employment in Canada. In it there is none of the divided opinion and contradictory policy recommendations that Bradford found in the Gordon Commission Report.[85] Instead, the Abella Commission Report provides both a plausible justification and a set of feasible implementation proposals for the introduction of workplace affirmative action in Canada. These ideas and recommendations for action, if adopted in their entirety by the government, would have had the effect of promoting a much more interventionist and regulatory function for governments vis-á-vis labour markets than existed at the time. They would also have enhanced the influence of pressure groups representing women, native people, disabled persons, members of visible minorities in opposing the interests of both organized labour and employers.

Bradford's account of the work of the MacDonald Commission records the influence of a public policy initiative which was to limit the scope of the state's intervention in the management of the Canadian economy.[86] However, as his representation of the work and questionable results of the Gordon Commission suggests, and as the material presented here and in the preceding chapters attest, the creation, work, and recommendations of the Abella Commission indicate the presence of a vigorous and influential counter policy discourse within both society as a whole and the governance institutions of the state: a policy discourse dedicated to promoting greater state intervention in the labour market and grounded in post-materialist notions of rights, quality of life, and minoritarianism.[87]

The following chapter explores the content of the legislation which flowed from the Abella Report and the public responses to its release in October, 1984. It also reviews the debates in the House of Commons leading up to the enactment of the Employment Equity Act and describes the evolution of that act from its tabling as Bill C-62 through to its proclamation into law in 1986.

1. The full text of the Commission's Terms of Reference will be found in Appendix A to this dissertation.

2. Neil Bradford, Commissioning Ideas: Canadian National Policy Innovation in Comparative Perspective, (Toronto: Oxford University Press, 1998), pp.102-130.

3. This view is not unanimous. For a contrary position, see, Walter Block and Michael A. Walker, On Employment Equity: A Critique of the Abella Commission Report, (Vancouver: The Fraser Institute, 1985), pp. 13-15.

4. Rosalie Silberman Abella, "Interpreting Equality," in Human Rights and the Charter, paper presented at the Third Annual Conference on Human Rights and the Charter, (Ottawa: Department of Justice, 1991), pp. 3-5.

5. Ibid.

6. Abella Report, p. 1.

7. Ibid.

8. National Archives of Canada, RG33-133(84-85/395), Vol. 19, File, "Research Documents," Jenny Podoluk, p. 2.

9. Abella Report, p. 2.

10. Ibid.

11. Abella Report, p. 193.

12. Abella Report, p. 193. Here the Abella Report quotes, in part from the Affirmative Action Technical Training Manual prepared for Employment and Immigration Canada.

13. Labour Market Development in the 1980's, (Ottawa: Employment and Immigration Canada, July, 1981), p. 92.

    Henceforth, this will be referred to as the Dodge Report, after the Senior public servant in charge of preparing the report.

14. Abella Report, p. 9.

15. Ibid.

16. Abella Report, p. 3.

17. Abella Report, p. 8.

18. Abella Report, p. 9.

19. Abella Report, p. 10.

20. Abella Report, pp. 11-15.

21. Abella Report, p. 15.

22. Abella Report, p. 254.

23. Abella Report, p. 4.

24. National Archives of Canada, GR33-133(84-85/395), Vol. 25, File, "Minutes of Meetings with Researchers."

25. Abella Report, p. 7.

26. Ibid.

27. Abella Report, p. 19.

28. Ibid.

29. Abella Report, p. 21.

30. Abella Report, p. 22.

31. The full text of that letter can be found in Appendix B.

32. Abella Report, pp. 21-22.

33. Abella Report, p. 21.

34. Abella Report, pp. 24-28.

35. Abella Report, pp. 33-38.

36. Abella Report, pp. 38-45.

37. Abella Report, p. 51,

38. See particularly Recommendations Nos. 38, 39, 40, 41, 46, 47, 51, 62, 70, 72, 73 and 78, pp.261-266 of the Abella Report.

39. Abella Report, p. 23.

40. Abella Report, pp. 253-254.

41. Abella Report, p. 17. Emphasis added.

42. F.L. Morton and Leslie A. Pal, "The impact of the Charter of Rights on public administration," in Canadian Public Administration, Vol. 28, No. 2, 1985, pp.233-234.

43. The citation is from Morton and Pal, who are quoting from an article entitled "Equality Before the Law in the Supreme Court of Canada: A Case Study," by Professor Marc Gold, which appeared in the Osgoode Hall Law Journal, 18, no. 3, 1980, pp. 336-427.

44. Daniel L. Horowitz, The Courts and Social Policy, (Washington, D.C.: The Brookings Institution, 1977), p. 34.

45. Abella Report, pp. 193-194.

46. Abella Report, p. 197.

47. Abella Report, p. 200.

48. Thomas Sowell, "Weber and Bakke, and the Presuppositions of 'Affirmative Action,'" in Discrimination, Affirmative Action, and Equal Opportunity, eds. W.E. Block and M.A. Walker, (Vancouver: The Fraser Institute, 1982), p. 53.

49. National Archives of Canada, RG33-133(84-85/395), Vol. 4, File, "Management Council for Responsible Employee Relations.

50. Abella Report, p. 195.

51. Abella Report, p. 197.

52. Abella Report, p. 203. See also p. 222.

53. Abella Report, pp. ii-iii.

54. Ibid.

55. This point was made also in a critique of the Abella Report by the Fraser Institute. See, Walter Block and Michael A. Walker, On Employment Equity: A Critique of the Abella Royal Commission Report, (Vancouver: The Fraser Institute, 1985), pp. 13-15.

56. Abella Report, p. v.

57. Abella Report, 203.

58. Abella Report, p. 204.

59. See, for Example, the following submissions to Abella Commission: National Archives of Canada, RG33-133(84-85/395), Vol. 1, File, National Action Committee on the Status of Women; RG33-133(84-85/395), Vol. 1, File, Le reseau d'action et d'information pour les femmes, (Raif); RG33-133(84-85/395), Vol. 1, File, The National Women's Liberal Commission; and RG33-133/395), Vol. 1, File, Federation of Women Teachers of Ontario.

60. Abella Report, p. 207.

61. Abella Report, pp. 207-209.

62. Abella Report, p. 214. Curiously, the Report ignores the value of having administrators familiar with, and sensitive to, economic issues: matters of vital importance to the managers of an enterprise.

63. Ibid.

64. Abella Report, p. 215.

65. Ibid.

66. Abella Report, p. 216.

67. Abella Report, pp. 217-218.

68. Abella Report, pp. 218-219.

69. Abella Report, pp. 216-217.

70. Abella Report, pp. 219-220.

71. Abella Report, pp. 221-222.

72. Abella Report, pp. 223-225.

73. Labour Market Development in the 1980's, (Ottawa: Employment and Immigration Canada, July, 1981), pp. 122-123.

74. Abella Report, pp. 226-227 and p. 232.

75. Abella Report, p. 173.

76. Abella Report, pp. 125-126.

77. Hugh Heclo, "Ideas, Interests, and Institutions," in The Dynamics of American Politics, eds. Lawrence C. Dodd and Calvin Jellison, (Boulder CO: Westview Press, 1994), p. 383.

78. Bradford, p. 15.

79. Abella Report, pp. 52-126.

80. Abella Report, p. 203.

81. Abella Report, p. 15.

82. Rosalie Silberman Abella, "Interpreting Equality," in Human Rights and the Charter, paper presented at the Third Annual Conference on Human Rights and the Charter, (Ottawa: Department of Justice, 1991), pp. 3-5.

83. Leslie W. Dunbar, A Republic of Equals, (Ann Arbor, Mich.: University of Michigan Press, 1966), p. 97.

84. For an elaboration of this idea, see: Ronald Inglehart, Culture Shift in advanced Industrial Society, (Princeton, NJ: Princeton University Press, 1990. For a consideration of this idea in a Canadian context, see: Neil Nevitte, The Decline of Deference: Canadian Value Change in Cross-National Perspective, (Peterborough: ON: 1996).

85. Bradford, particularly pp. 61-64.

86. Bradford, pp. 112-123.

87. Nevitte, p. 9.

Chapter Six

CODIFYING CHANGE

Introduction

According to Heclo, and in a Canadian context, Bradford, public policy change emerges out of a reciprocal interaction amongst ideas, interests, and institutions. The objective of this chapter is to trace how the interventionist ideas first articulated by the Bird Commission[1] and later refined into a vindicative public philosophy and practicable implementation proposals for workplace affirmative action by the Abella Commission were incorporated into the governance institutions of the nation. Heclo notes that "institutions tell ideas how to survive;...."[2] That is, institutions support some ideas both by incorporating them into the governance apparatus of the state and, perhaps more importantly, by creating what Galbraith has called a "conventional wisdom"[3] of accepted principles and rules firmly embedded in the consciousness of society's political actors, including elected officials, appointed administrators, the leadership of pressure groups representing a whole array of interests, and, importantly, society in general. In other words, institutions are the conduit through which new ideas become incorporated into the mores and expectations of the polity. In a real sense, they are the medium for changing the way things are done. This chapter traces the evolution of the embedding of the idea of workplace affirmative action articulated by the Abella Commission into the existing matrix of the nation's governance institutions, from the tabling of the Abella Report in the House of Commons in November, 1984, through to the proclamation of the Employment Equity Act and the introduction of its associated Regulations and administrative guidelines in 1986. More specifically, it also compares the government's legislative effort with the recommendations of the Abella Commission.

First, though, it should be noted that royal commission reports do not inevitably result in government action. In many cases, their work is simply ignored (in whole or in part) by the government which established them, or their recommendations may not be implemented for years. Walls, for instance, notes that governments often tend to take no action whatsoever to implement the recommendations of the royal commissions they create, or else delay their implementation for long periods of time. As an example, he cites the fact that only certain of the 1961 McPherson Royal Commission on Transportation recommendations were ever adopted by the government, and then only after nearly a decade.[4] This was not the case with the Report of the Commission on Equality in Employment. Less than eight months after its tabling in the House of Commons in November, 1984, a bill based at least in part on the Abella Report's recommendations was introduced in the House of Commons in June of 1985. That bill, with amendments, was passed by the House of Commons in April of 1986, and proclaimed on August 13, 1986, three short years following the creation of the Abella Commission. All of this despite the fact that the Commission was established and given its mandate by a Liberal government and the responses to its recommendations were undertaken by the Progressive Conservative administration of Brian Mulroney.

This review of the embedding of a number of the Abella Commission's recommendations into the government's workplace affirmative action legislation begins with a brief summary of the recorded public and political responses to the Abella Report. This chapter also outlines the requirements that this legislation imposed on employers subject to its jurisdiction and of its Regulations, as well as the requirements of the guidelines developed under those Regulations, along with those of the Federal Contractors Program, in terms of what employers were obliged to do in hiring, training, and promoting their workforces. In addition, it places this within the context of the assumptions about the nature of the operation of the labour markets which animated the two decades-long social dialogue regarding the introduction of workplace affirmative action in Canada first articulated by the Bird Commission in 1970.

Initial Political Reaction to the Abella Report

On November 20, 1984, the Honourable Flora MacDonald, then Minister of Employment and Immigration, tabled the Abella Report in the House of Commons.[5] Justice Abella had done her work. It was now up to the politicians to deal with the issue of affirmative action in the workplace. The response in the House to the tabling of Justice Abella's report was initially muted. For example, the Minister fielded only one question about it during Question Period in the House on November 21. In her reply, Minister MacDonald commented favourably on Justice Abella's suggestion to adopt the use of the term "employment equity" in place of the then more commonly used "affirmative action." She also promised that all the Commission's 117 recommendations would by considered by Cabinet.[6] On November 26 Minister MacDonald, in response to a question by MP Lorne Nystrom, indicated that the government would in due course implement certain of the Abella Report's recommendations but at that point declined to commit the government to any specific action.[7] The issue was not raised in Question Period again until March 8, 1985.

Print Media Reaction to the Abella Report

Although the Abella Report quickly disappeared as an issue from Question Period in the House of Commons, it did not fade from public view. On the contrary, the media devoted considerable space to it in the weeks immediately following its tabling in the House of Commons. For example, Maclean's Magazine, Chatelaine, the Globe and Mail, the Financial Post, the Calgary Herald, the Ottawa Citizen, the Vancouver Province, and Le Soleil of

Quebec City, amongst others, all carried news stories, articles, or editorials commenting on affirmative action in general and on the recommendations of the Abella Report in particular.[8] In addition, many newspapers in smaller centres did likewise, if sometimes only to pick up on items already featured in the metropolitan areas. Part of the reason for this media interest was that Minister MacDonald, while remaining resolutely non-committal about the government's intentions with respect to adopting any of the Report's specific recommendations, nevertheless supported its intent and said so publicly. On the whole, it appears that the issue did not generate a great deal of public interest. Nor did it did not spawn a deluge of letters to the editor.

On the other hand, commentators and groups did make their views known. For example, Gordon Fairweather, then Head of the Canadian Human Rights Commission, endorsed Justice Abella's recommendations for mandatory affirmative action.[9] At the other end of the spectrum, Laura Sabia, writing in the St. Catherines Standard, declared that, "Judge Abella's report may be well intentioned, but if implemented, it will be a blueprint for chaos. Bury it!"[10] In general, those who supported women's rights tended to also support the Abella Report's recommendations. For example, an article in the December 12, 1984 edition of the Toronto Star suggests that the Abella Commission's recommendations could go a long way in improving the workplace experience of women.[11] Employer groups, on the other hand, were generally far more circumspect in their responses. For instance, an article in the December 1, 1984 edition of the Financial Post quoted the President of the Canadian Organization of Small Business as indicating that while he could agree with the objectives of Judge Abella's Report, he believed that much better progress could be made with 'moral suasion' than with legislation.[12]

There is another aspect to the print media's treatment of the Abella Commission's Report following its tabling in the House of Commons in November, 1984, on through to the government's official response in March of 1985 which suggests which group the print media considered the most influential in the crafting of that Report and of the government's response to it. Of the one hundred twenty-seven copies of print media comment deposited with the National Archives, only sixteen referred specifically by name to each of the designated groups identified in the Report. Another eighty-nine (seventy per cent of the total) referred specifically to women but categorized the other designated groups as 'minorities,' the 'disadvantaged,' or the 'disenfranchised' but did not indicate what these minorities were. Furthermore, in these cases, the commentary referred primarily to the concerns expressed by women's groups. The remaining twenty-two items dealt with certain administrative or judicial aspects of the recommendations or the government's response without focussing specifically on issues of importance to the designated groups. This suggests that the media were both more aware of, and responsive to, women's issues than to the concerns of native people, disabled persons, or members of visible minorities.

The Government's Official Response to the Abella Report

On March 8, 1985, less than four months after tabling the Abella Report in the House, the Honourable Flora MacDonald rose in the House to present the government's response to its recommendations. As part of her announcement, the Minister adopted the term "employment equity" to denote the action that the government would take. She also indicated that the government accepted the notion that it had an obligation to promote equal opportunity in the labour market for target group members.[13] Specifically, the Minister said that the government would require federal Crown corporations, federally regulated businesses, and contractors wishing to provide the government with goods or services to implement government-approved workplace affirmative action programs in their enterprises. She added that federal Crown corporations would be obliged to report to Parliament annually on their plans for establishing such programs as well as on their success in achieving them. She indicated that the same conditions would be imposed on federally-regulated businesses which employed one hundred or more staff, and that such firms would be given a three-year period to develop the necessary data systems to do so. She also announced that any enterprise providing goods or services to the federal government with a value of more than $200,000 would be required to comply with the same conditions as Crown corporations or federally-regulated businesses.[14]

In what was obviously an effort to assuage employer concerns, the Minister predicted that these measures would not involve major administrative costs nor would they entail unnecessary intervention by government into the staffing decisions they made. As well, she indicated that the information provided by employers to Parliament would be made public as an incentive for action by employers. She also promised that the government would consult with pressure groups representing women, native people, disabled persons, and members of visible minorities as well as with business and labour organizations to solicit their views on the kind of legislation required to achieve the government's objectives.[15] Thus, in its initial response to the Abella Commission recommendations the government accepted its basic premise that discrimination against target group members existed in Canadian workplaces and that a legislated mandatory affirmative action response was necessary. In addition, it agreed that Crown corporations and federally regulated enterprises be made subject to this legislation and that a contract compliance program be developed to ensure that businesses providing goods or services to the government also conform to this legislation.

On the other hand, the government totally ignored the Commission's recommendations to introduce a state-supported and directed daycare program (one of the main demands of women's groups).[16] It also ignored the fifty recommendations advocating a much expanded role for the federal government with respect to education and training as a means of advancing the interests of target group members in the workplace. Nor was the Commission's call for legislation imposing the principle of equal pay for work of equal value (also a demand by women's organizations) part of the government's response at that time. Lastly, the government rejected all of the Commission's enforcement recommendations and opted instead for a public disclosure system to encourage employer compliance to the requirements of the legislation.

The federal government's response to the Abella Report also included a summary document for general distribution intended to present its position on this issue. It consisted of three short, point-form sections. The first compared the earnings and unemployment rates of target group members with those of white males indicating how these differed to the benefit of the latter. The second defined employment equity as the government conceived it. Thus, it noted that employment equity was designed to identify and remove discriminatory practices and policies which adversely affected designated group members. It also noted that employment equity was aimed at ensuring "fair representation" of such group members in the labour force. It predicted, as well, that employment equity would promote economic development in Canada and would benefit employers by providing them with a more productive and competent workforce. In addition, it denied that employment equity would entail the creation of "complicated bureaucratic mechanisms" and that it would "impose quotas" on employers. The third section was essentially an abstract of the manner in which the government intended to implement employment equity.

Of particular interest in the third section were the government's estimates of the annual costs to employers affected by the legislation of implementing employment equity. In this part, it estimated that this would cost federal Crown corporations $7.4 million annually and federally-regulated employers an additional $15 million. In addition it forecast that its contract compliance measures would cost government suppliers $8 million a year. That is, the implementation of employment equity would entail additional costs of $30.4 million annually for employers subject to the legislation as well as for those enterprises supplying goods or services to the government. There was not, however, any indication of what factors were used to establish those estimates. Nor did this document provide estimates of the costs incurred by the government itself to administer the program. In the several thousand pages of government documentation reviewed during the research conducted for this dissertation, that $30.4 million estimate is the sole instance where the costs of employment equity to Canadian employers subject to the Act or to the government's contract compliance policy are mentioned.

The government's estimated additional yearly cost to employers of slightly more than $30 million[17] in order to comply with the requirements of the Employment Equity Act is arguably a significant sum. Assuming that Lum's figure of roughly 370 federally regulated employers and Crown corporations falling under the jurisdiction of the Act is correct,[18] this means that $22.4 million annual cost estimated by the government would amount to an average of slightly more than $1.35 million per employer. Lum does not include employers captured by the government's contract compliance policy. This annual cost would not have a significant impact on firms like Crown corporations, airlines, banks, communications companies, and railways. These enterprises already have multi-million dollar operating budgets and the administrative expertise to deal with issues resulting from the added regulatory burden imposed by the Act. Still, if these averages were to have held for the decade between the time employers were first obliged to comply with its requirements and the time of Lum's research, and excluding increases due to inflation, the total cost to those 370 enterprises would have amounted to nearly a quarter of a billion dollars. These are not inconsiderable costs, even though they may represent only a very small portion of the operating costs of those enterprises over that period. On the other hand, these enterprises were, and are, large enough, and dominant enough in their respective fields to be in a position to pass on these added costs to their clients or customers.

Opposition Responses to the Government's Proposals

Taking into account the fact that calculations of political partisanship are always involved in exchanges in the House of Commons, the responses of the Official Opposition were, initially at least, to some extent supportive the government's initiative in this instance. For example, the Honourable Warren Allmand, the Liberal Party employment critic, indicated that this initiative was a "forward step."[19] This sentiment was echoed by Liberal MP Sheila Finestone.[20] That being said, both MP's declared, however, that the government's proposals lacked certain key elements. For example, Allmand emphasized that without legislated sanctions the measures proposed by the government would be ineffective.[21] For her part, Finestone supported Allmand's position and in addition urged the Minister to allow the Canadian Human Rights Commission full scope for investigating employer non-compliance and for enforcing compliance with the government's objectives.[22] On the other hand, Lorne

Nystrom, the New Democratic Party employment critic, saw little to support in this government initiative. He charged that "The government has stolen the words of Judge Abella but not the substance of the Report."[23] And like the Liberal MP's, he, too, demanded that the government establish sanctions in law so that employer compliance would be assured. He cited the experience of the United States with affirmative action to support this contention. He also referred to the federal government's mandatory affirmative action programs for Francophone employees in the public service as an example of what could be done for other groups.[24]

House of Commons Debates

As was the case with the tabling of the Abella Report in Parliament in November, 1984, the employment equity issue again quickly vanished from the attention of the House of Commons once the Minister had announced the government's intentions. Aside from roughly half a dozen references to the government's position on affirmative action and to the Abella Report itself in the context of other matters, the matter was not referred to again until June 27, 1985, when Minister MacDonald tabled Bill C-62: An Act Respecting Employment Equity, for first reading the day before the House of Commons rose for its summer recess.[25] Minister MacDonald initiated discussion on second reading of Bill C-62 on October 3, 1985, three weeks after Parliament reconvened. During the six days of debate in the House which followed on second reading, a total of sixty-one presentations to the Bill were made by members of Parliament. Of these, twenty-two were from members of the ruling Progressive Conservative Party, eighteen from Liberal Party members, and twenty-one from the New Democratic Party. Predictably, government members supported the Bill, while Opposition members found fault with it. For example, at one point in the debate, the NDP, supported by the Liberals, moved that the Bill be hoisted for six months. That is, that further discussion on second reading be delayed by six months so as to give the Government time to introduce changes favoured by the opposition. Just as predictably, the hoisting motion was defeated on a recorded vote and the Bill was declared read a second time on November 21, 1985, also on a recorded vote. The six days of debate set aside for second reading represented a remarkably short period of time for consideration by the House of Commons of such a major piece of legislation. That was partly because, over Opposition objections, the Government invoked the Time Allocation rules of the House to limit the debate.

In opening the debate on second reading of Bill C-62, Minister MacDonald indicated that the government's primary objective with this legislation was to change the workplace so as to ensure that designated group members were treated justly and (following the argument in the Abella Report) to do this by going beyond the removal of barriers. She added that the government believed that employment discrimination, both overt and systemic, existed in Canada and that it was not prepared to tolerate this. She also emphasized that this Bill testified to the government's commitment to act in the interests of justice in the workplace and declared that it was no longer willing to deprive target group members of fair opportunities in the labour market. She indicated that under the Bill federally regulated enterprises with more than one hundred employees and contractors supplying the federal government with goods or services to a value in excess of $200,000 would be required to hire, train, and promote target group members in all areas of their operations, that such employers and contractors would be required to provide the government with detailed data on their success in implementing employment equity, that these data were to be made public as a means of ensuring compliance with the legislation and that employers who failed to comply with these reporting requirements would be heavily fined. She also indicated that under the Bill, the data provided by employers could be used by the Canadian Human Rights Commission to initiate action against them. Finally, the Minister expressed the government's belief that employment equity would not only provide greater opportunity for target group members but would also assist employers to build competitive workforces.[26] What the Minister did not say was that (aside from the obligation to report on their progress in implementing employment equity and the attendant penalties for failing to do so), the government's proposed legislation would allow employers to act as they saw fit in implementing employment equity in their enterprises. It was an omission that the opposition was quick to pounce on.

Warren Allmand, the first Liberal Party member to speak to the Bill, indicated that while he endorsed the principles found in the Bill and agreed that discrimination in the workplace existed in Canada, he could not support the manner in which the government proposed to give effect to those principles. For example, he charged that the government's proposal would amount to no more than voluntary measures in practice and would not achieve the legislation's objectives. He also complained that the Bill's definition of employer was too restrictive in that it would not include all employers (just those with one hundred employees or more) and would thus leave many designated group members unprotected, that the Bill failed to define what constituted the barriers to employment that were to be eliminated, and urged the government to amend it so as to provide for an independent enforcement agency with the power to levy penalties against employers who failed to comply with the legislation.[27]

Like his Liberal counterpart, Lorne Nystrom, the lead speaker for the New Democratic Party, declared his support for the principles embedded in Bill C-62. Like Warren Allmand, he sharply criticized the Bill for its failure to ensure that those principles would be achieved, and on virtually identical grounds. For instance, he noted that the Bill called for no more than voluntary action on the part of employers. And like Allmand, he claimed that voluntary measures would not achieve the desired results, which, in his view, could only be realized with mandatory ordinances. Like his Liberal counterpart, he urged the government to impose legislated objectives and timetables for achieving them on employers and to establish an independent agency to enforce such a regime. In addition to this, Nystrom added a few touches of his own. He charged that the Bill failed to address the issue of establishing equal pay for work of equal value and failed to deal with the need for greater accessibility to daycare. In support of these arguments he noted that the experience of the United States with affirmative action had proved very beneficial to business. Finally, he complained that the Bill did not allow for the formal participation of organized labour in all phases of the employment equity process.[28]

The parties' initial statements summarized in the preceding paragraphs were re-articulated in a variety of ways during the other fifty-eight times members spoke to the Bill during the debate on second reading. The examples and cases cited differed but the essential position of each party hardly varied. There were, however, a number of additional points put forward during the debate. For instance, several Progressive Conservative members argued that employment equity enhanced the productivity of enterprises because it ensured that firms that adopted it could tap into the otherwise wasted talents of target group members.[29] Likewise, both government and opposition MP's cited the example of the special hiring practices established in law for the benefit of World War II veterans and the later legislation designed to ensure a proportional participation by Francophones in the federal public service as examples of effective affirmative action.[30] As well, at least one opposition MP interpreted the Abella Commission Report as advancing the notion that employment was a right that target group members possessed.[31]

During the course of the debate, virtually all speakers from both sides of the House referred to or cited the Abella Report to support their arguments. Moreover, all accepted, if at times only implicitly, the Abella Report's fundamental assumption that the absence of statistical parity between the proportion of target group members employed in an enterprise and that found in the labour force as presumptive evidence of discrimination by employers. For example, both John Nunziata and David Orlikow used this notion as a basis to declare categorically that there was rampant discrimination in the workplace against target group members.[32] Thus, both the Liberals and New Democrats framed their suggestions about how the government should establish employment equity in terms of correcting injustices in the workplace.[33] This need for justice was deemed by the opposition as requiring "mandatory," as opposed to the "voluntary," measures they attributed to Bill C-62.

On the other hand, government members who spoke to the Bill emphasized that in a practical sense employers were best able to determine exactly how to implement affirmative action in their enterprises. For their part, opposition members—citing the authority of the Abella

Report—called for the government to establish by legislation both the specific proportion of target group members employers would be required to hire, train, and promote and the time in which they would be allowed to do so.[34] This indicates that what the opposition was proposing in effect was the imposition of hiring quotas on employers. That is, they advocated that the government embody in legislation what proportion of any employer's staff would have to be made up of target group members.

In some respects, the fact that the House of Commons debate on second reading of Bill C-62 was based to a large extent on the Abella Report is a testimony to the wide range of issues it dealt with and on how well it reflected the *zeitgeist* of its time. It is clear from the record in Hansard that even though all parties in the House relied heavily on the Abella Report to sustain their conflicting arguments, all interpreted it differently. One is here reminded of a choir singing from different parts of the same hymn book. The result is inevitably noise, certainly not harmony.

Bill C-62 and the 1986 Employment Equity Act Compared

While the Employment Equity Act, assented to on June 27, 1986 resembled in many ways Bill C-62 tabled for first Reading by the government a year earlier, it differed from that Bill in certain important respects. For example, whereas Section 2 of Bill C-62 called for the amelioration of the disadvantages in the workplace experienced by the target groups, the same section of the Act called for their correction. This change involved more than the use of a synonym. To ameliorate means no more than to make something better. On the other hand, to correct something means to remove a wrong or a fault and carries with it connotations of wrongdoing calling for punishment or reprimand for the wrongdoer and reparations for the victim for the wrong done. Subtle as it was, that modification signalled a change in emphasis on the part of the government. In addition, sub-Section 7 of Bill C-62 allowed the minister responsible for the administration of the Act discretion in whether to prepare for the House of Commons an analysis of the consolidated reports of employers which were required to be tabled yearly in the House of Commons. The Act made the preparation of such an analysis mandatory.

There were also a number of sub-Sections and Sections in the Act which did not appear in Bill C-62. Thus, Section 3.a of the Act that exempted certain local or private business initiatives in the Yukon and the Northwest Territories from specific provisions of the Act was absent in the Bill; the definition of Minister in the Act was much broader than that found in the Bill, and Section 4 of the Act obliged employers to consult with unionized or non-unionized employees in establishing any employment equity measure, a stipulation not found in the Bill. As well, Section 11.b of the Act allowed the Governor-in-Council to determine by regulation those persons who were to be considered members of any designated group for the purposes of the Act, a provision which was missing in the equivalent Section 9 of the Bill. In addition, three entirely new sections not included in Bill C-62 were included in the 1986 Act. First, Section 5 of the Act required employers to not only introduce employment equity into their enterprises but also to prepare yearly plans with specific goals and timetables for implementation and obliged them to retain copies of such plans for at least three years, presumably for review by state agents. Neither proviso was called for in the parent Bill. Second, the Act obliged the Minister responsible for employment equity to turn over copies of all reports prepared by employers, called for in Section 6 of the Act, to the Canadian Human Rights Commission: again, a condition absent in the Bill. Finally, Section 13 of the Act (but not the Bill) provided for a form of sunset clause in that it required that the Act itself be reviewed after five years by a committee of the House of Commons. However, this clause was not intended to establish whether the legislation was still relevant or if it should be repealed. Rather, its intent was simply to recommend changes to the legislation.

The debates in the House of Commons on second reading of Bill C-62 demonstrated that the government refused to accept opposition party recommendations for changes at that point in the process. However, the differences that emerged between the Bill and the Act indicate that the later review of the Bill in Committee resulted in at least some of the changes advocated by the opposition. For example, the obligation imposed on employers by Section 4 of the Act to consult with employees when implementing employment equity responded, in part at least, to NDP demands during second reading to accord organized labour a formal role in the implementation of employment equity in an enterprise. In like manner, the obligation laid on the responsible Minister to provide the Canadian Human Rights Commission with copies of employer reports addressed to some extent both Liberal and NDP calls for a body independent of government to oversee the imposition of employment equity, since it brought that agency formally into the process.

The 1986 Employment Equity Act and Regulations

The Act

The Employment Equity Act was assented to on July 27, 1986, three years to the day following the announcement of the establishment of the Abella Commission and a short nineteen months from the time the Abella Commission Report was tabled in the House of Commons. This Act designated women, aboriginal people, persons with disabilities, and persons who, because of their race or colour, were a visible minority in Canada, as classes of persons needing legislated protection in the labour market. It applied to enterprises which came under federal jurisdiction which employed more than one hundred persons, including those firms set up to perform any function or activity on behalf of the federal government. Generally speaking, this means the banking industry, the radio and television industry, airlines, railways, and other trans-provincial carriers, amongst others. However, the Act excluded from its provisions enterprises located in the Yukon or Northwest Territories which carried on activities of a local or private nature and those federal agencies defined as departments in the federal government's Financial Administration Act.

In addition, the Act required employers to consult with employees (both organized and unorganized) with respect to the implementation of employment equity. It also required them to identify and eliminate any practice which resulted in employment barriers being created against persons belonging to members of groups designated under the Act and obliged them to institute "positive policies and practices" and make the accommodations necessary to ensure that members of the Act's designated groups were represented in all categories of employment found in the enterprise. It further stipulated that such representation was to be at least proportional to their representation in the labour force, or in those segments of the workforce from which the enterprise could be expected to recruit. The Act also stipulated that the same conditions applied to promotions within the enterprise.

In terms of administrative requirements, the Act obliged employers to prepare yearly employment equity plans which specified employment equity implementation goals for the enterprise, including timetables for that implementation. It also stipulated that such plans be retained by employers for at least three years. In addition, it obliged employers to file yearly reports with the minister responsible for administering the Act containing the following information: the number of designated group members employed, as well as the total number of people employed, by location and industrial sector; the degree of representation of members of designated groups, by occupational category; the salary ranges of employees and the degree of representation of designated groups in each range; and the extent of the representation of members of designated groups to the total number of individuals hired, promoted, or terminated during the reporting period. In addition, the Act required employers to certify to the accuracy of the data in the yearly reports submitted to the Minister and stipulated that employers who failed to file the required annual reports could be fined up to fifty thousand dollars upon summary conviction. Contrary to what Minister MacDonald had promised in the House of Commons, the legislation did in fact create a complicated and costly bureaucratic system for employers. For example, in its formal response to the Abella Commission Report, the government itself estimated that the cost of implementing workplace affirmative action for Crown corporations, federally regulated enterprises, and firms supplying goods and services to the government (the contract compliance firms) was in excess of thirty million dollars annually.[35] Even if these estimates were not understated, (and as the Gun Registry legislation proves, they often are) this is not an inconsiderable cost. Moreover, as will be seen in the following chapter, some employer groups did express concerns about the reporting requirements of the Act and about their problems with identifying target group members on their staffs.

The Act also specified the responsibilities of the federal government Minister responsible for its administration. Thus, it called for the minister to provide the Canadian Human Rights Commission with copies of the reports submitted by employers, that he or she file with the House of Commons a yearly consolidation of employer reports, and to provide, on request, copies of the reports submitted by employers to any person prepared to pay the costs thereof. The Act also authorized the Governor-in-Council to make regulations: (1) defining the expressions "salary," "hired," and "promoted;" (2) defining persons who are to be considered members of designated groups for the purposes of the Act; and (3) prescribing anything which was to be prescribed by the Act or measures for carrying out its purposes. In addition, the Act permitted the Minister to issue guidelines to employers dealing with employment practices, policies, and plans relating to the implementing of employment equity. Finally, the Act contained a clause which required the House of Commons to review the provisions of the Act at the end of five years.

The Regulations

The Employment Equity Regulations made pursuant to the original Employment Equity Act were put into force by Order-in-Council on August 16, 1986. These Regulations defined the terms "salary," "hired," "promoted," and "terminated" for the purposes of Section 6(1) of the Act. They also defined the meaning of the terms "census metropolitan areas" and "reporting period," amongst others not found in the Act. In addition they defined the meanings of the terms "aboriginal peoples," "persons with disabilities," and "visible minority" found in the Act. Moreover, they prescribed in detail the manner and form in which data was to be submitted by employers, including the specific forms to be utilized for particular purposes. They also prescribed a quarter of a year as the subdivision of a salary range to be used by employers in submitting their data and prescribed the form and substance of the accuracy of the data that employers were obliged to submit. They dictated that where an enterprise governed by the

Act was a corporation, the certificate of accuracy of data submitted by the employer be signed by the chief executive officer of that corporation. They defined occupational groups, subgroups, and job titles to be used by employers to record and tabulate the data they were required to submit to the Minister. Lastly, they designated the following Canadian cities as Census Metropolitan Areas for the purposes of the Act: Calgary, Edmonton, Halifax, Montreal, Regina, Toronto, Vancouver, and Winnipeg.

The Federal Contractors Program:

The Federal Contractors Program was first implemented on October 1, 1986. Its objective was to require private sector employers subject to provincial regulation but supplying goods or services to the federal government or its agencies, to comply with the provisions of the Employment Equity Act in the same manner as federally regulated enterprises. This program was not referred to, nor authorized by, that Act nor its associated Regulations but was rather a policy established by the federal government of the day. In contrast, Section 42(2) of the 1996 Act brings that program under the ambit of the Act. In its original configuration, the federal Contractors Program took effect when an enterprise bid on a contract to supply goods or services to the federal government. Whether or not a firm became subject to the Program depended on the number of permanent full-time and part-time workers who worked for the enterprise and on the dollar value of the bid. Those thresholds were the presence of more than one hundred employees and a bid worth more than $200,000.[36]

If the conditions outlined in the preceding paragraph applied, the enterprise was required to sign a "Certificate of Commitment" pledging to implement employment equity measures identical to those imposed on firms governed by the Act as a condition of its bid being considered. Failure to do so meant that the bid could be rejected outright, except for contracts involving construction, the purchase or lease of real property, and the provision of legal services, even if it otherwise met all the contractual requirements.[37] The program also applied to all firms participating in joint-bidding situations if any bidding partner employed more than a hundred workers.[38] Moreover, enterprises which were regulated by both federal and provincial governments were required to comply with the provisions of the Program, even those parts of the corporation regulated under provincial law. In addition, all parts of such enterprises (including those which were provincially regulated) were subject to compliance reviews by federal government agents.[39] Moreover, temporary employment agencies or foreign suppliers with a resident workforce of more than one hundred were also subject to the Program.[40] The Program did provide for an appeal process in case an enterprise disagreed with the results of a compliance review. In such cases, a third party assessor acceptable to both the enterprise and the government was to be appointed by the minister.[41]

The Employment Equity Guidelines

The original employment equity guidelines for employers were developed by the Canada Employment and Immigration Commission following the proclamation of the Employment Equity Act in 1986. Their contents were consistent with the requirements of that Act, its Regulations, and the Federal Contractors Program and need not be repeated here. The same is true of the Guidelines developed for the revised Act of 1996. Nonetheless, there are significant differences between the two. The initial guidelines were prepared with only employers in mind. They were contained in a twenty-seven page bulletin which outlined the federal government's reasons for launching that initiative, and brief statements explaining what the government understood to be systemic barriers, special measures, and reasonable accommodation. In addition, they briefly described the government's intentions with respect to the manner in which employers were to plan for, organize, manage, and maintain the changes in their personnel practices required under the Act.

The Input and Recommendations of the Public Service

General

The enactment of any legislation inevitably entails the direct involvement of the state's administrative and operational arm—its bureaucracy—in the process, for it is on that bureaucracy that elected officials and other interested parties depend to translate policy decisions into legislation and administrative structures able to achieve the intended results.

The enactment of the federal government's Employment Equity Act was no different in this respect. A number of federal departments were involved with the development of that act. The Privy Council Office, the Treasury Board Secretariat, the Department of Justice, and the Employment and Immigration Commission all had a part to play. However, for the purposes of this dissertation, only the work of the Employment and Immigration Commission will be considered. This was the body selected by the Mulroney Government to administer its employment equity legislation and was therefore much more intimately involved in all of the activity leading up to the enactment of the legislation than any of the others.

The information in this part is drawn solely from Human Resources Development Canada (HRDC: the successor department to the Employment and Immigration Commission–CEIC) documents obtained under the Access to Information Act.[42] Unfortunately, not all of the material requested was made available. Of the roughly 1,240 pages of documents called for in the request, more than 200 were withheld by HRDC. Some were not made available because they were deemed to be a record of consultations between public servants and a minister and his or her staff and so protected under Section 21(b) of that Act. Others were not provided because they were held to constitute client-solicitor privilege and thus protected under Section 23 of the Act. Lastly, a large number were withheld because they were deemed to be "confidences of the Queen's Privy Council for Canada" and, as such, exempt from disclosure under Section 69 of the Act.[43]

Nevertheless, the material that was provided by HRDC illuminates certain features of the role played by one federal agency in the implementation of workplace affirmative action in Canada. For example, it indicates that public servants prepared a variety of briefing materials for the use of the minister both in the House of Commons and elsewhere. They also prepared a detailed working paper on employment equity for use in their extensive consultations with representatives of pressure groups, organized labour, and employers during the time that the Act was under consideration in the House of Commons. The material provided by HRDC also indicates that there were a number of administrative and operational matters relating to the implementation of the Act that were in contention within the department. It also provides an interesting insight into the nuanced range of views on employment equity between the public servants responsible for developing policy and those charged with the responsibility of administering the Employment Equity Act, regulations, and operating guidelines.

Briefing Notes Prepared for the Minister

The Briefing Notes prepared for the Minister dealt with a number of policy issues regarding employment equity. For example, they provided answers to the objection raised by critics of the legislation introduced by the government that it failed to provide for an adequate enforcement agency to police the legislation. The Minister was also advised how to reply to those who charged that employment equity would impose hiring quotas on employers. There were also sections in these notes which dealt with the definitions of a number of terms associated with employment equity, such as workforce, composition of the employers staff, and occupational groupings, amongst others, as these were to be used in the legislation. These briefing notes also provided advice to the Minister when fielding questions about the Abella Report's recommendations regarding the establishment of Equal Pay for Work of Equal Value legislation, which the government had declined to incorporate into the legislation, with detailed answers to questions about the nature and objectives of employment equity, and responses for the Minister to use when dealing with questions on specific Sections of the proposed Act. There was also briefing material prepared for the Minister to respond to modifications to Bill C-62 proposed by opposition party members when it was debated in committee during Third Reading in Committee. These records indicate that thirty-eight amendments were proposed by Opposition Party members, generally calculated to achieve through amendments what they had failed to obtain in the debates on principle during Second Reading of the Bill. A number of these amendments which would have given the Canadian Human Rights Commission an equal role with Employment and Immigration were opposed by the Government. The Government also rejected amendments which would have brought its departments under the jurisdiction of the legislation. Its reasoning in the latter case was that all federal departments already were subject to satisfactory employment equity measures resulting from the Treasury Board guidelines then in effect.

The Working Paper on Employment Equity

The Working Paper on Employment Equity was the vehicle used by the government, at both the political and bureaucratic levels, for the extensive consultations it conducted with target group representatives, organized labour, and employers as the legislation worked its way through the House of Commons. Specifically, it provided information on the proposed Act and sought advice on the development of the regulations to be authorized under that legislation. In keeping with the government's approach to employment equity, it emphasized that employment equity was the "responsibility of business, labour, and individual Canadians." It stressed that employment equity was the way to create a vibrant and healthy economy by utilizing more effectively the skills and talent of pressure group members. It also repeated the Abella Report's contention that such individuals were "treated unfairly in the working world" and denied the opportunity to "participate in our society as full and equal members." In addition, it noted that the government was concerned with results rather than in the methods employers used to achieve those results: in this case an increase in the hiring, training, and promotion of pressure group members so that their numbers in all parts of the enterprise coincided with their proportion in the labour force. It also emphasized that the procedures developed through the regulations associated with the Act would have to allow for meaningful comparisons between an employer's workforce and the incidence of pressure group members in the labour force. The balance of the Working Paper dealt with details regarding the implementation of the Employment Equity Act.

Issues to be Addressed

The introduction of legislation over matters not already governed by law brings with it the need to create new administrative and operational procedures. It also sometimes brings with it differences of opinion between those public servants responsible for policy development and those charged with implementing the resulting programs. In addition, in an era when aggressive and influential pressure groups exist the problems of implementation inevitably multiply. Thus, public servants were faced with two kinds of issue: those internal to the government, and others brought forward by outside groups. The introduction of the federal government's employment equity legislation was no exception.

Internal Issues

One of the major internal issues to be resolved within the bureaucracy was that of creating a balance between protecting the privacy of individuals required by existing federal legislation and that of making employment equity records public, as was to be required by the new act. A related issue (but a critical one to the administrators) was how to protect the privacy of individual workers while at the same time ensuring that employers submitted detailed enough reports so that state agents would have sufficient information to aggregate the employer data so as to permit them to analyze it with enough precision to determine if the required progress was being made towards the workplace affirmative action objectives of the legislation. Of equal concern to the administrators was to ensure that they received detailed enough information from employers so as to make informed comparisons amongst them as well as to meet the Act's requirement to provide reliable information to the public. The privacy issue was, in part, the result of concerns raised by the Treasury Board Secretariat. That body also differed with the administrators in the Canada Employment and Immigration Commission (CEIC) on the question of whether employers were to be required to report information on part-time staff at the national or provincial level. The Treasury Board Secretariat preferred the national level. CEIC, which was to be responsible for the administration of employment equity, argued for reports to be prepared at both levels.

A second issue raised within CEIC itself was that of the detail involved in the reporting of salary information by employers by occupational group and the methodology that was to be used to do this. This issue emerged as a result of objections by some employers to providing this data in the first place. In this case, the Employment Services Group in CEIC wished to ensure that employers be required to disclose salary data in absolute dollars at both the top and bottom of the appropriate salary ranges for any occupation. They argued that this was the best way to allow them to make accurate inter-provincial, inter-sectoral, and inter-employer comparisons. That group also believed that without that specificity of data employers could give target group members inflated occupational titles without commensurate compensation to, in its words, "make the company look good." However, the National Occupational Analysis and Classification Systems Group (NOACS) in CEIC expressed serious reservations about the appropriateness of the methodology advocated by Employment Services.[44] NOACS did not object to having employers report but rather opposed the use of the occupational classification system proposed by the Employment Services Group for reporting their employment equity program results by employers. They contended that the proposed system would not provide the government with the reliable data it needed to satisfy the objectives of the Act. In support of this contention, they noted that the system proposed would force shipyards which did government work to report the majority of their blue-collar workforce as being semi-skilled, when in fact most were highly skilled tradesmen. They added that using that system would also require chemical companies to classify the occupation of chemical process chief operator as an unskilled worker, despite the fact this job demanded a high degree of skill.

A third issue to surface was the concern that the Employment Equity Guidelines then being prepared for use by employers would be useful only to firms with a personnel department. NOACS believed that these guidelines would create difficulties for employers with workforces of more than one hundred (the point at which the legislation was to take effect) but less than three hundred—a size where firms normally established such a department. It also noted that their review suggested that it was difficult to distinguish from the proposed guidelines what was a legal requirement and what was considered good practice by the government when implementing employment equity. It should be noted here that NOACS did not object to employment equity as an objective. Rather, what they wanted was an occupational classification system that was administratively sound and operationally feasible, as well as guidelines for employers which were easily understandable.

Lastly, the documents reviewed for this part indicate that the CEIC unit responsible for employment equity policy demonstrated limited appreciation of the administrative and operational issues involved. For example, this group advocated that the Employment Equity Guidelines for employers be structured so that they could be applied equally to the ninety per cent of Canadian employers not covered by the legislation. It also argued for having the Canadian Human Rights Commission assume full responsibility for enforcing employment equity. It warned that not doing so would attract criticism by pressure groups. It also called for employers to be required to formally agree to what it termed "a commitment to change." It added that as then proposed, the Employment Equity Guidelines for employers would have had the effect of bogging the government down "searching for evidence of discrimination." It also called for the Guidelines to contain examples of appropriate employment equity projects taken from the experience of particular employers. While these suggestions demonstrated an acute awareness of, and support for, target group views about what affirmative action in the workplace ought to entail, it indicated no appreciation of the complexities of administering the legislation or of the concerns of employers.

External Issues

In addition to the internal issues dealt with by the public servants in CEIC and other federal departments, concerns arising from outside government also had to be addressed. These concerns emerged during the year-long consultation process the government conducted while the legislation was being drafted. For the purposes of this discussion two kinds of groups will be considered: designated groups and labour—as the beneficiaries of workplace affirmative action—and employers who would have to bear the costs thereof. Unfortunately, the material provided by HRDC under an Access to Information Act request does not furnish an extensive body of material for examination. Still, some insight into the concerns and demands of these groups as the legislation, regulations, and operational guidelines were being developed can be discerned.

For example, the Canadian Ethnocultural Council argued that the Canadian Human Rights Commission ought to be the sole employment equity enforcement agency. The Council also wanted the legislation to be broadened in scope to include what it termed "non-visible minority ethnic groups." It also wanted assurance that employment equity would apply to each of the federal government's special employment programs and that the government would establish special job programs for immigrant women. It also expressed the fear that "the government's restraint program will render the employment equity program ineffective."

Organized labour's initial concerns during the consultations prior to the enactment of the Act centred on two themes: protecting seniority and ensuring that unions formed an integral part of the employment equity process at every stage and level. For example, the Canadian Conference of Teamsters emphasized that in their industry it was the employers who controlled the hiring. The implication here, of course, was that the union had no control over who was hired. They also indicated that in the face of an anticipated loss of ten thousand jobs in their industry their attention was focussed on seniority as a priority in protecting the interests of their membership. Although they opposed mandatory affirmative action quotas for their industry they were less supportive of the employers' complaints about the cost of employment equity in the industry. Lastly, they did not see themselves as having a major contribution to make to employment equity at the time. Even though the Longshoremens' union controlled the hiring for the industry through its hiring halls, it emphasized that at the time its primary concern was the fair distribution of a shrinking amount of work amongst its current membership. Again, the concern here was to protect the seniority principle. In addition, they were also concerned that the legislation would impose reporting requirements on them given that they controlled the hiring for the industry. They also expressed reservations about their role in any joint union-management committee responsible for employment equity.

Whereas the Teamsters and the Longshoremen were interested in the practical issues they each faced in protecting the interests of their members, the Canadian Labour Congress (CLC) was more interested in influencing the development of the Act and its Regulations. For example, during the consultation process the CLC wanted the salary bands to be used for employer reports to be extended beyond what was being proposed by the government. They also wanted the term "qualifications" used in the Act to be defined in the Regulations. In addition they were concerned that the use of the phrase "not otherwise authorized by law" in Section 4 of the Act would allow employers to circumvent employment equity objectives in the event that other federal legislation allowed them to retain traditional employment barriers which would otherwise be proscribed under the proposed Act. Moreover, the CLC pressed strongly for the establishment of equal pay for work of equal value provisions in the Act. They also sought to have any reference to the proposed Employment Equity Guidelines removed from the Act. The reason for this was that they feared that Ministers could dilute the legislation by means of those guidelines. The CLC also pressed for the Act to enhance and enforce a greater role for unions in the workplace affirmative action process, including a requirement that the specific makeup of joint union-management employment equity committees be written into the Regulations.

Employer concerns raised during the consultation process centred mainly on the reporting requirements imposed by the proposed legislation. That was the major thrust of the representations made to the CEIC Executive Director of Employment Services by the Canada Mortgage and Housing Corporation (CMHC). It argued that many of its staff positions simply did not fit into any of the occupational classifications the government planned to use. It added that in any event, the computer data base they used to classify their occupations did not match those proposed by the government and stressed that complying with its proposed system would entail "significant massaging" of both their data base and occupational classifications. The concern here was one of increased administrative workloads and costs. CMHC also questioned the need for employers to report on contract short-term employees and stressed that the material provided them did not specify how handicapped an employee had to be before being considered as disabled under the Act.

In like manner, the employers' group representing federally-regulated employers in the transportation and communications industries (FETCO) also objected to the government's proposed reporting requirements for employment equity. FETCO expressed concern that the government's insistence that the identification of target group members working for a firm be voluntary would inevitably result in inaccurate statistical information of limited analytical value. It feared that the refusal by an enterprise's designated group staff to self-identify or to refuse such identification by the employer would present a totally inaccurate picture of the firm's workforce and lead to the firm's being punished by government as a result. FETCO also objected to employers being required to report on the composition of their staff by occupational classification and salary range. They contended that the disclosure of such "proprietary information" could be useful only to an enterprise's competitors. They also suggested that no such reporting requirement was required by the Act. Lastly, FETCO argued that more time was needed for employers to put in place the requisite administrative procedures to deal with affirmative action issues than the government was prepared to allow.

The Abella Commission Recommendations and the Act

Governments rarely, if ever, implement each and every recommendation of the royal commissions they establish. The experience of the Abella Commission was no different in this respect. The one hundred seventeen Abella Commission recommendations for establishing a legislated workplace affirmative action regime in Canada reflected closely the Commissioner's interpretation of her mandate and covered the entire spectrum of issues she considered important in order to achieve her vision of equality in the workplace. It is not the intention here, however, to compare each and every one of those recommendations with the provisions of the Act. Rather, this comparison will be done on the basis of certain important themes found in the Commission's report. For instance, nearly a third of the Commission's recommendations dealt with ideas to change the government's involvement in education, training, and trades and professional accreditation in order to benefit target group members. However, none of these recommendations are reflected in the Act. Likewise, the Commission recommended the establishment of a state-directed and financed daycare system as part of any employment equity legislation in order to assist women to enter the labour force or to maintain their attachment to it. Again, this is not reflected in the Act.[45] Nor were the Commission's recommendations for legislating the concept of "equal pay for work of equal value" made part of the Act.

More specifically, whereas the Abella Commission recommended that all federally regulated employers be made subject to any workplace affirmative action legislation, the Act covered only those employers with more than one hundred employees. Similarly, the Commission recommended that all firms doing business with the government be required to institute affirmative action programs and this contract compliance feature become an integral part of the legislation. While the government did indeed implement contract compliance measures, these differed from the Abella Commission's recommendations in two important respects. First, these measures were implemented as policy and were not embedded in the legislation at that time. Second, while the Abella Commission envisaged contract compliance to apply to any enterprise doing business with the government, the government's policy limited its application to firms employing more than one hundred employees or to those with contracts for goods or services which exceeded $200,000.

Also largely absent from the Act was the type of enforcement mechanism recommended by the Abella Commission. In its place, the government opted for a system of disclosure which required employers to disclose to the government the results of their efforts to conform to the requirements of the Act, coupled with the imposition of heavy fines in those cases where employers failed to make the required disclosures. Nor did the Act accord the Canadian Human Rights Commission the paramount role in administering and enforcing the Act, as recommended by Justice Abella. Instead, the Act merely requires the Minister of Employment and Immigration (identified in that Act as the government department responsible for its administration) to provide the Canadian Human Rights Commission with copies of the reports employers were required to submit to government. Neither does the Act create a new agency specifically charged with the administration and enforcement of the Act (one of Justice

Abella's four enforcement options). Instead, that responsibility was assigned to the existing Canadian Employment and Immigration Commission. Nor does the Act allow for the implementation of workplace affirmative action programs to vary by region, as proposed by the Abella Commission.

Thus, it can be seen that the government of the day, like others before and after it, did not adopt the Abella Commission's recommendations in their entirety, although it must be emphasized that it did move on the issue more expeditiously than most. According to Timpson, the reasons the government moved only on some of the Abella Commission's were to be found in the opposition in principle to the concept of workplace affirmative action from what she has labelled as the "anti-regulation and pro-family lobbies" in both the Cabinet and Caucus,[46] as well as the government's fear of alienating the "small business lobby and its supporters in Parliament."[47] In addition, the government's decision to only partially implement the Abella Commission's recommendations can be attributed, in part at least, to the continuing influence on public policy of what Bradford has called the "liberal-continentalist" discourse, which was unsympathetic to any state intervention in economic matters.[48]

On the other hand, the Act is totally consistent with one of the Abella Commission's major policy proposals: namely, the imposition of mandatory workplace affirmative action on all federally regulated employers, even though this was mitigated somewhat by the exclusion of firms with fewer than one hundred employees. This was a feature that had been resisted by virtually all employer groups, including some Crown corporations, who much preferred a voluntary approach to the matter. It was also, however, the key demand of the groups representing women, native people, disabled persons, and visible minorities. In addition, although the Mulroney government did not make contract compliance with respect to all firms supplying goods and services to the government an integral part of the Act, as recommended by the Abella Commission, it did implement it as basic government policy from the beginning. The Act also follows the Commission recommendation that employers be given some flexibility in implementing the requirements of the legislation. Moreover, it conforms to another Commission recommendation that employers be required to collect data on the number of members of designated groups in their employ and file this data with the responsible state agency as part of their submissions to the government with respect to their plans to conform to the provisions of the Act.

Summation

The introduction of the federal government's employment equity legislation was the culmination of a decade-long evolution of ideas about changing workplace conditions in Canada first advanced by the Bird Commission (described in Chapter Two) that were later adopted by others, including groups representing native people, disabled persons, and members of visible minorities, state officials—both elected and appointed—who all brought with them their particular visions of what was best for their members, often couched in terms of improving the public good, as each perceived it. There were also organized labour and employer interests, each with their own views about what the government should or should not do to change conditions in the workplace. Understandably, not all of these views and visions were congruent. Indeed, they were often in conflict. The provisions of the Employment Equity Act, both in its declared objectives and its regulatory requirements, coincide with many (though certainly not all) of the positions advocated by the pressure groups and recommended by the Abella Commission. They do not, however, reflect the declared interests of employers, particularly those owning or managing small enterprises.

The enactment of this legislation not only altered the manner in which employment was to be allocated in Canada but also marked the emergence as a political force of groups representing women, native people, disabled persons, and visible minorities. That enactment was also an expression of the growing influence of the kind of political and social ideas that Inglehart has labelled as post-materialist. These ideas represent an ethos characterized by an increased interest in political participation and a greater willingness to challenge traditional elites and authority.[49] In addition, the differences between the positions of the target groups, as reflected in the Abella Commission recommendations, and the provisions of the legislation suggests that Bradford's two opposing discourses in the nation's political life each played a part in shaping the provisions of that Act.[50]

Moreover, the provisions of the Act indicate which interests won or lost in the debate about the introduction of workplace affirmative action in this country. It shows that the winners were the designated groups. However, not all of these were equally successful. As was indicated in Chapter Four, the objectives of the many target pressure groups involved were not identical. In its initial manifestation, the Act mirrored most closely (though certainly not completely) the concerns and aspirations of women's groups, and to a lesser extent, those of visible minority groups in that it requires employers to hire, train, and promote members of its designated groups in direct proportion to their numbers in the labour force. That Act obviously did not please every one of these groups in every respect, but it did provide for results that, in one form or another, they advocated. On the other hand, there was nothing in the Act which addressed the objective of native groups for native-controlled, state-subsidized economic development initiatives as the primary means for creating employment opportunities for native people. Likewise, organized labour did not achieve its twin objectives of securing a formal voice in the development or amendment of this legislation nor of obtaining a legislated role (other than the right to be consulted where it is to be implemented) in its introduction in the workplace. The clear losers, however, were the employers, who lost their traditional ability to hire on the basis of their preferences, whatever those preferences may have been.

Unlike the fate of the Gordon Commission recommendations,[51] but much like the experience of the Rowell-Sirois and MacDonald Commissions,[52] the Abella Commission recommendations not only resulted in government action in that legislation or significant public policy changes flowed from them but also because they generated a supporting coalition of pressure groups. Moreover, these royal commissions all succeeded in channelling the very discussion of an issue in certain directions and not others. This is not to say, however, that the provisions of the Employment Equity Act reflected in total the recommendations of the Abella Report. Nor did the Act apply to federal government departments. Nor yet have successive federal governments enacted the kind of omnibus "equal pay for work of equal value" legislation nor the state-supported daycare programs advocated by Justice Abella.

Lastly, the material presented in this chapter illustrates how pressure generated by politically active groups in support of an idea is moulded into certain patterns or guided in certain directions by the institutional actors involved. It also demonstrates the extent to which the Abella Commission succeeded in embedding its basic philosophy and many of its implementation ideas into the governance institutions of the nation by virtue of the fact that both are reflected directly in the provisions of the Employment Equity Act. But perhaps more significantly, it shows how both became the "conventional wisdom"[53] which thereafter formed the basis for any discussion of the experience of the Act's target groups in the labour market. This material also indicates that the ideas about the workplace condition of women first articulated in 1970 by the Royal Commission on the Status of Women in Canada then refined and expanded over the next decade to include native people, disabled persons, and members of visible minorities served as the intellectual template for the introduction of workplace affirmative action in Canada. Similarly, it indicates that the Abella Commission was successful in creating a supportive alliance of pressure groups, politicians, and bureaucrats sufficiently cohesive to maintain that support over time and influential enough to ensure the enlargement in the nature and scope of the original Act when this was reviewed by Parliamentary Committees in 1991, 1995, and 2002.

The following chapter examines the extent to which those reviews altered the nature and scope of the Act.

1. Report of the Royal Commission on the Status of Women in Canada, (Ottawa: Information Canada, 1970).

2. Hugh Heclo, “”Ideas, Interests, and Institutions,” in The Dynamics of American Politics: Approaches and Interpretations, (Boulder, CO: Westview Press, 1994), p. 383.

3. John Kenneth Galbraith, The Affluent Society, 2nd ed. Rev., (Boston: Houghton Mifflin Company, 1969), p. 10.

4. C. E. S. Walls, “Royal Commissions-Their Influence on Public Policy,” in Canadian Public Administration, Vol. 12, No. 3, 1969, p. 366.

5. House of Commons Debates, First Session, Thirty-third Parliament, (Ottawa: Queen’s Printer, 1984), p. 413.

6. Op. Cit., pp. 438-439.

7. Op. Cit., p. 440.

8. National Archives of Canada, RG33-133(85-85/395), Vol., 27, File, “B. Sulgit: Press Response to Abella Report, December, 1984 to March, 1985.”

9. Ibid.

10. Ibid.

11. Ibid.

12. Ibid.

13. Debates of the House of Commons of Canada, First Session, thirty-third Parliament, (Ottawa: Queen’s Printer), pp. 2820-2821.

14. Ibid.

15. Ibid.

16. For an exhaustive treatment of the issue of daycare as it relates to the work of the Abella Commission, see: Annis May Timpson, Driven Apart: Women’s Employment Equality and Child Care in Canadian Public Policy, (Vancouver: UBCPress, 2001) particularly pp. 97-204.

17. The actual estimate was $30.4 million. Given the government’s concern about employer reaction to the introduction of workplace affirmative action, this estimate may well have been understated.

18. Janet M. Lum, "The federal employment Equity Act: goals vs. implementation," in Canadian Public Administration, Vol. 38, No. 1, 1995, p. 46. This article does not include firms supplying goods and services to the government captured under its contract compliance policy.

19. Op. Cit., p. 2822.

20. Op. Cit., p. 2827.

21. Op. Cit., pp. 2822-2823.

22. Op. Cit., p. 2827.

23. Op. Cit., p. 2823.

24. Op. Cit., pp. 2823-2825.

25. Op. Cit., p. 6035.

26. Op. Cit., pp. 7277-7279.

27. Op. Cit., pp. 7279-7280.

28. Op. Cit., pp. 7281-7283.

29. Op. Cit. See the comments of Mary Collins at page 7285; Walter McLean at page 7310; Pauline Browes at 7938; and Maurice Tremblay at page 8236.

30. Op. Cit. See the comments of Walter McLean at 7310; Patrick Boyer at page 7916; Ernie Epp at page 7931; and David Orlikow at page 8178.

31. Op. Cit. See the comments of Jean-Robert Gauthier at page 8227.

32. Op. Cit. See the comments of John Nunziata at page 7819 and David Orlikow at page 8178.

33. Op. Cit. See the comments of Don Boudria at page 8194 and Lynn McDonald at page 8192.

34. Op. Cit. See the comments of Sergio Marchi at page 7922 and 7925; Margaret Mitchell at page 7311; Don Boudria at page 8194; and Ernie Epp at page 7931.

35. This material was obtained from Human Resources Development Canada through an Access to Information Act request.

36. Employment Equity: Federal Contractors Program: Questions and Answers, (Ottawa: Minister of Supply and Services Canada, 1987), p. 1.

37. Ibid.

38. Ibid.

39. Ibid.

40. Ibid.

41. Ibid. p. 9.

42. The Human Resources Development Department is the successor to the Canada Employment and Immigration Commission.

43. An Appeal to the Office of the Information Commissioner of Canada against the decision of HRDC to withhold some of the data requested was denied by that Office.

44. NOACS was the Branch in CEIC responsible for developing the occupational categories used by governments, employers, and industry at the time to describe and classify occupations found in Canadian labour markets.

45. For an exhaustive treatment of the reasons for the government's decision not to adopt the Abella Commission's recommendations to introduce a daycare program in Canada, see: Annis May Timpson, Driven Apart: Women's Employment Equity and Child Care in Canadian Public Policy, (Vancouver: UBCPress, 2001).

46. Timpson, p. 127.

47. Timpson, p. 132.

48. Neil Bradford, Commissioning Ideas: Canadian Policy Innovation in Comparative Perspective, (Toronto: Oxford University Press, 1998), pp. 62-63.

49. Ronald Inglehart, Cultural Shift in Advanced Industrial Society, (Princeton, NJ: Princeton University Press, 1990), pp. 3-14. For a Canadian Perspective on the emergence of a post-materialist ethos, see also Neil Nevitte, The Decline of Deference: Canadian Value Change in Cross-Cultural Perspective, (Peterborough, ON: Broadview Press, 1996).

50. Neil Bradford, See particularly pp. 61-65.

51. This refers to the Royal Commission on Canada's Economic Prospects which was chaired by Walter Gordon.

52. The first refers to the 1937 Royal Commission on Dominion-Provincial Relations; the second to the 1982 Royal Commission on the Economic Union and Development Prospects for Canada.

53. John Kenneth Galbraith, The Affluent Society, 2nd ed., (Boston: Houghton Mifflin Company, 1969), p. 10.

Chapter Seven

CONSOLIDATING CHANGE

Introduction

The enactment of legislation and the establishment of a bureaucracy to administer it is, of itself, no guarantee of its effectiveness nor of its acceptance by the citizenry of the nation. A law which lacks popular support may be ignored or evaded by enough citizens to prevent it achieving its purpose, in which case it may be tacitly ignored by the government which enacted it: witness the federal government's difficulties in persuading large segments of the population to conform to its gun registry legislation and its resultant inability to meet its objectives. This was not the case with the Employment Equity Act. This chapter traces the evolution of that Act and the consolidation of its influence amongst elected officials, public servants, target groups, organized labour, and in some instances at least, employer representatives. This will include a review of the work and recommendations of the Special Committee in 1991, and an examination of the results of a committee established by the Chrétien government in 1993 to review and recommend on both the operation of the then current Act and the government's proposed amendments to it. It will also compare the resulting legislation, regulations, and policy guidelines with those of the 1986 Act. Finally, it will examine and comment on the Parliamentary review of the 1996 Act carried out in 2002 and the government's response to that committee's recommendations.

Hearings of the Special Committee to Review the Employment Equity Act

Section 13.1 of the 1986 Employment Equity Act stipulated that it was to be reviewed by Parliament five years following its coming into force. In keeping with this, on October 30, 1991 the House of Commons established a Special Committee to review both the provisions of the Act and its operations.[1] This Special Committee met on eighteen separate occasions from November 21, 1991 to April 2, 1992. On seventeen of those occasions it heard from a total of ninety-eight different witnesses from forty-three groups. They represented a cross-section of pressure groups representing women, native people, disabled persons and members of visible minorities, employer organizations, organized labour, and government departments and agencies. Table 6.1 shows the distribution of the groups and witnesses called before the Special Committee.

Table 6.1 Distribution of Groups and Witnesses

	Groups	Witnesses
Women	3*	9
Aboriginal	4	6
Disabled Persons	4	8
Visible Minorities	5	16
Government Bodies	7	18
Employers	9	26
Organized Labour	7	11
Others	4	4
TOTALS	**43**	**98**

- **This table notes only separate groups or individual witnesses. Some women's organizations appeared more than once**

Unlike Justice Abella, who sought the broadest possible spectrum of input, the Special Committee appears to have been rather more selective. For example, groups who represented smaller employers such as the Canadian Association of Small Business or the Canadian Federation of Independent Business did not appear before the Committee, which only heard from groups representing Crown Corporations and those who spoke on behalf of pan-Canadian enterprises or their associations. It should also be noted that the number of groups and witnesses representing women's interests appearing before the Special Committee was relatively low compared with the experience of the Abella Commission. However, in the case of the Special Committee, there were a number of groups representing both visible minority women and visible minority concerns of a more general nature. For the purposes of this discussion, some of these groups were incorporated into the visible minority category, since their testimony centred largely on issues specific to visible minority members as members of that group rather than on those of visible minority women as women. Similarly, Aboriginal groups spoke on behalf of all aboriginals, including aboriginal women.

It should also be noted that the positions taken by the representatives of the pressure groups invited to appear before the Special Committee reflected to a large extent those of the group representatives which had earlier made submissions to the Abella Commission. So too did the comments of the Members of Parliament representing the various political parties serving on the Committee, as well as those of Monique Vézina, then Minister of Employment and Immigration. As with the Members of Parliament who had debated the merits of Bill C-62 in 1985, the views expressed reflected the positions taken by the parties in 1985. Nevertheless, this similarity masked a significant difference between the two events. In 1985, the legislators were dealing with an unknown, since workplace affirmative action had not before been legislated before at the federal level. Hence, since no one could predict with certainty the outcome of their decisions, the debate centred more on the principles involved. On the other hand, in the case of the Special Committee there was a half decade of experience with the Act. Thus, in this instance, greater attention was given to the manner in which the Act had been administered and to what its effects had been on the labour market.

Moreover, the non-elected actors in this process, the target groups, employers, organized labour, and the state agents charged with the administration of the Act, were now in a position to comment on its effects as they understood them. This experience was reflected in the kinds of presentations made to the Special Committee. In many respects, however, positions had changed very little since the time of the Abella Commission and the establishment of the Act. For example, the existence of systemic discrimination in the labour market, as indicated by the absence of parity between the proportion of designated group members in the labour market and that in an employer's workforce, was so then widely accepted that it was scarcely alluded to. Indeed, at least one employer organization, the Federally Regulated Employers-Transportation and Communication group, stated that in their view:

> The legislation and the Federal Contractors Program have served an invaluable role in focussing attention on the need to encourage change in the composition and distribution of the employed work force.[2]

This suggests that whatever reservations this particular employer group may have had with respect to the implementation of the Act, it accepted its central thesis that discrimination in the workplace existed where the proportion of a group's representation in the general population differed from that in the employer's workplace.

One exception to the absence of comment on what the Abella Report had labelled as systemic discrimination in the workplace during the Special Committee hearings was a reference to existing "inequalities in the labour market" resulting from lower participation rates and occupational segregation made by a representative from the Employment and Immigration Commission.[3] A second was the assertion by a member of the National Action Committee on the Status of Women that, "The Canadian labour market is characterized by systemic discrimination."[4] While not commenting directly on the issue of systemic discrimination, Michael Walker of the Fraser Institute simply dismissed out of hand the efficacy of workplace affirmative action as a policy option to correct that kind of statistical imbalance.[5]

A second notion associated with employment equity, namely that of equality of results, also appears to have been so widely accepted that it was scarcely mentioned. Indeed, the only exception was a comment by the first representative of CEIC to testify before the special committee, who asserted that equality of result (not necessarily equality of opportunity) was the objective of employment equity.[6] A third recurrent and related theme in many of the witness statements to the Special Committee was a demand for what can be termed legislated results: that is, for the law itself to stipulate the exact proportion of protected group members that was to be found in a workplace for an employer to be in compliance with that law. This position was articulated in a number of ways and was variously emphasized. It was, however, always an integral part of the demands of designated group and organized labour representatives. For example, in support of that notion, the group "Toronto Women in Film and Television" advocated that legislation stipulate that employment equity plans, goals, and timetables be made mandatory in law for employers.[7] Similarly, the Canadian Alliance for Visible Minorities called for proportionally-based employment equity "targets" to be established by legislation.[8] Likewise, the National Automobile, Aerospace and Agricultural Implement Workers Union of Canada advocated what it termed "strong mandatory" employment equity measures, but without specifying precisely what this would involve.[9] The Public Service Alliance of Canada also called for legislation which stipulated that employers be compelled to comply with legislated employment equity.[10] For its part, the Assembly of First Nations called for "mandatory goals and timetables" for the employment of native persons by the federal government.[11] And in perhaps the only instance where the term quota was applied to mean the achieving of proportional representation in the workforce, the representative of the B.C. Coalition of People with Disabilities advocated their imposition on behalf of disabled individuals and women.[12] Generally speaking, the notion that the law stipulate the exact numerical proportion of protected group workers to be found in the workplace was opposed by employer groups, who, while not necessarily opposed to employment equity in principle, argued for a more flexible implementation approach.

A fourth theme which emerged from the deliberations of the Special Committee was the issue of the roles and responsibilities of the state agencies charged with administering the Act. An integral part of the Special Committee's purpose was to determine which agency should assume that responsibility. Under the 1986 Act, the Canada Employment and Immigration Commission (CEIC) was made responsible for assisting employers to develop their employment equity plans, monitor their compliance, collect and interpret their reports within the prescribed deadlines, and report to Parliament on a yearly basis. It was also required to forward copies of all employer plans it received to the Canadian Human Rights Commission for conformity to the Canadian Human Rights Act. Consequently, those who appeared before the Special Committee were asked to comment on the matter. Of those who provided a definite answer, employer groups expressed a clear preference for dealing with CEIC while most other groups favoured other options, including having the Canadian Human Rights Commission made the sole agency responsible for this legislation.

For instance, Canadian National Railways supported the notion of a lead role in the process for CEIC because of its workforce and labour market expertise, its experience with employment equity and its record of working with employers generally.[13] That position was echoed by the Manitoba Telephone System, which recommended that CEIC both administer and enforce the Act.[14] Similarly, the representatives of the Federally Regulated Employers-Transportation and Communications Group recommended that CEIC be given the sole responsibility for administering the Act because of its experience with employment training and the provision of other employment related services for workers.[15] In like fashion, the Canadian Chamber of Commerce suggested that CEIC act as the primary administrator for the Act, with the Canadian Human Rights Commission to function as the enforcer of last resort.[16] In addition, the Canadian Bankers Association stressed that the roles and responsibilities of CEIC and the Canadian Human Rights Commission be made explicit and clear so as to avoid confusion and duplication.[17]

On the other hand, all other groups appearing before the Special Committee advocated either the creation of an independent agency to administer and enforce the Act or a much more pro-active mandate for the Canadian Human Rights Commission in the process. For example, the Toronto Women in Film and Television group stressed the need for an independent regulatory body to administer and enforce the Act.[18] So did the Canadian Ethnocultural Council.[19] So too did the Committee for the Advancement of Native Employment, which also advocated that target group members, including Natives, be appointed to such a body.[20] In a similar vein, the Canadian Paraplegic Association recommended that an independent agency be created to enforce the Act or that the powers of the Canadian Human Rights Commission be extended so as to ensure employer compliance with the Act.[21] For its part, the Confédération des Syndicats Nationaux advocated that CEIC act as the general administrator of the Act, with the Canadian Human Rights Commission assuming responsiblity for its enforcement,[22] an arrangement eventually adopted by the government. But perhaps the most radical suggestion of all came from the Public Service Alliance of Canada. Its representative indicated that what this group wanted was the creation of an employment equity administrative and enforcement agency completely unaccountable to government in any respect and not restricted in its decisions by any other legislation.[23]

In addition to asking employer, organized labour, and target group witnesses for their views on which agency should be responsible for promoting and enforcing employment equity for the federal government, the Special Committee questioned both the Minister of Employment and Immigration and the Canadian Human Rights Commissioner on this issue. The Minister replied, in part, that:

> I feel that the Canadian Human Rights Commission is playing a role that it should not be playing with regard to the application of the current act.[24]

She added that in her view the Canadian Human Rights Commission's role ought to remain that of providing "a recourse to individuals and organizations whose rights are infringed upon."[25] In support of this position she noted that the administration of the Act was more in keeping with the experience and normal responsibilities of her department than it was of the Canadian Human Rights Commission.[26] She did, however, acknowledge that in any event the responsibilities of the two agencies needed to be more clearly specified in any revised act.[27] The Minister's views on the role of the Canadian Human Rights Commission with respect to employment equity was reiterated by a CEIC representative who indicated that "we felt a human rights model didn't quite fit...."[28] in dealing with employment equity. What is interesting in these exchanges is the characterization of the role of the Human Rights Commission as the protector of violated individual and group rights. This implies that both the Minister and the representative of her department considered that CEIC's involvement as the administrator of the Employment Equity Act did not entail protecting individuals from discrimination in the workplace, the raison d'ètre advanced for introducing employment equity in the first place.

In his testimony, Max Yalden, then Canadian Human Rights Commissioner, was more circumspect in his responses than the Minister had been. He did, however, make the following points with respect to his agency's role with respect to employment equity. First, he noted that in his view the Commission lacked the authority under the Employment Equity Act to monitor employers for compliance.[29] He also noted that this Act was silent on enforcement procedures. He added that in order to be effective any enforcement agency would have to be given a clear legislative mandate and sufficient resources to accomplish its task.[30] On these points, Mr Yalden was on solid ground, since the 1986 Act was indeed silent on those issues. He also argued that in his view giving the Canadian Human Rights Commission the mandate to enforce the Employment Equity Act was preferable to creating an entirely new agency to do so, on the basis the Commission already existed.[31] Mr. Yalden was also questioned about the working relationship between his commission and CEIC. Indeed, John Nunziata, the Liberal Party member of the Special Committee, referred to this as a "turf battle" between the two agencies.[32] While insisting that his Commission did indeed have an important role in the employment equity process (a view Minister Vézinza and her officials obviously did not share) he indicated that there was a "reasonably cordial" relationship between the two.[33] These exchanges suggest that there was some divergence of opinion and perhaps tension between the two federal agencies about how the Act was to be interpreted and implemented. This in turn suggests that there existed a potential for employers to get caught up in a bureaucratic cross-fire as they sought to comply with the ever expanding intricacies of the revised Act, its associated regulations, and the administrative guidelines formulated and interpreted by state agents.

With respect to the principles supporting the application of the Employment Equity Act, Mr. Yalden indicated that in his view any evidence of under-representation of designated group members in an employer's workforce was "prima facie evidence of a discriminatory practice."[34] He added that the intent to discriminate need not be a factor in assessing whether employment discrimination existed in a workplace.[35] Later in his testimony Mr. Yalden also indicated that he did not believe in the imposition of quotas of target group members on employers.[36] In this instance, Mr. Yalden was simply reflecting what Galbraith has in another context termed "the conventional wisdom,"[37] that is, that which "has the approval of those to whom it is addressed."[38]

Other issues were also raised by the witnesses who appeared before the Special Committee. One that was touched upon by virtually everyone was whether the Act should apply to government departments. On this point, there was virtual unanimity that this be so. Another issue where there was less agreement was the manner in which employers who were reluctant or unwilling to take the provisions of the Act seriously were to be dealt with. On this matter, Minister Vézina, while emphasizing that she stood for enforcing the Act if need be, declared that she preferred to offer incentives to employers to encourage compliance rather than to invoke punitive measures to force them to do so.[39] She also indicated that she believed that any employment equity standards established by the law should be balanced against possible negative consequences for employers.[40] Other witnesses held very divergent views. For example, while suggesting that employers who provided adequate accommodation in their workplaces for disabled persons be rewarded with tax-incentives, the Coalition of Provincial Organizations of the Handicapped also proposed severe penalties for those who did not. This group recommended that employers who failed to comply with the law be fined five per cent of their payroll costs or $100,000, whichever was greater. They also proposed that for a second offense employers be fined ten per cent of their payroll costs or $200,000, and again, whichever was greater. They also suggested that such fines be placed in a special fund to assist the handicapped to participate in the labour market.[41] That position was echoed by the B.C. Coalition of People With Disabilities. This group also advocated that all employers who did not maintain at least six per cent of significantly handicapped persons on staff be fined $100 per month per position, with the money used to assist the handicapped in the workforce.[42] For its part, the Canadian Labour Congress recommended that non-complying employers be fined $100,000 or five per cent of their payroll costs, whichever was greater.[43]

In addition, several witnesses called for the Act to be modified to include employers with no more than fifteen to twenty staff. That position was taken by the representative of the B.C. Coalition of People with Disabilities[44] and by those representing the Canadian Ethnocultural Council.[45] That stand was also taken by the Canadian Labour Congress[46] and the Coalition of Provincial Organizations of the Handicapped,[47] amongst others. There were also calls by organized labour representatives for some form of formal role for unions to be mandated by the Act. For example, the National Automobile, Aerospace, and Agricultural Implement Workers Union of Canada pressed for a formal role for unions in the development of the Federal Government's employment equity legislation.[48] For its part, the Public Service Alliance of Canada advocated that the legislation be amended to stipulate that organized labour have equal decision making authority with employers in the development of an enterprise's employment equity plans.[49] A similar stand was taken by the Confédération des Syndicats Nationaux.[50]

In what can be termed a variation on a theme, a number of witnesses called, not for equal decision making authority for target groups with employers in the development of employment equity plans, but rather for state funding to allow such groups to effectively represent the interests of their members within the existing framework of the Act and Regulations. This was the recommendation of the Canadian Council on Rehabilitation and Work, who wanted such funds to enable groups representing disabled individuals to help their members find work.[51] A similar position was taken by the National Organization of Immigrant and Visible Minority Women in Canada, which called for "the government to provide substantial and ongoing funding...."[52] for groups which assisted the effective integration of visible minority immigrant women into the labour force. While the Aboriginal groups which appeared before the Special Committee did not advance identical proposals for modifying the Act, on one point at least virtually all agreed: that from their perspective employment equity was essentially a prelude to, and a support for, facilitating native self-government. This position was explicitly advanced by the Native Council of Canada,[53] and the Committee for the Advancement of Native Employment.[54] For its part, the Assembly of First Nations viewed employment equity as a means of enhancing the recognition of native rights by the larger society.[55]

For employers, two important issues were the costs of implementing employment equity and the under-representation of their efforts at achieving employment equity resulting from the refusal of target group members to identify themselves as such. With respect to costs, the Canadian Bankers' Association indicated that its member banks had undertaken expensive outreach projects to attract target group members, with limited results.[56] The same group also indicated that the differing standards and reporting requirements employers were faced with when dealing with the three levels of government added significantly to the their costs. In support of this position, it noted that it had cost one member bank more than a quarter of a million dollars, because it was compelled to use a completely different computer program than that which they had to use to comply with federal government requirements, to satisfy the reporting standards of the City of Toronto's employment equity program.[57] The same concern about the costs to employers of complying with the differing reporting requirements of federal, provincial, and municipal governments was also voiced by the Canadian Chamber of Commerce[58] and the Canadian Manufacturers' Association.[59] On the other hand, the National Action Committee on the Status of Women (one of the few pressure groups which commented on costs to employers) indicated that they had given no consideration to such costs.[60] For their part, the state agents responsible for administering the Act acknowledged that they had been unable to determine what the implementation of employment equity would cost individual employers.[61]

Under the Employment Equity Regulations established under Section 11.b of the Act individuals were allowed to identify themselves as members of one of the Act's target groups or to agree to have their employer do so. What this meant was that target group members were given an absolute right to refuse to identify themselves as such. By doing so they automatically created an under-counting of the number of target group members their employers were allowed to incorporate into the employment equity reports they were required to submit to the government. Understandably, employers found this disturbing. Representatives of a number of federal Crown Corporations also objected to this provision of the Act.[62] In support of this contention, they cited the case of an aboriginal hired by the CBC in Winnipeg because he spoke a native language fluently, but who resolutely refused to identify himself as a member of that target group or to allow his employer to do so.[63] This concern with target group under-reporting was not limited to public sector employers. The same misgivings were expressed by the Canadian Chamber of Commerce.[64]

The Report of the Special Committee

In May of 1992, the Special Committee established by the House of Commons to review the Employment Equity Act presented its report to the house.[65] As the framework for considering the matter, the Committee relied heavily on the assumptions articulated by the Abella Commission about the nature and purpose of employment equity. Thus, it accepted the Abella Report's contention that designated group members had been (and still were) routinely subject to workplace discrimination by being excluded from employment opportunities because of the traditional practices of societal institutions.[66] The Report's analysis and recommendations were grouped into what the Committee considered were the "key areas" requiring attention: the scope of the Act, implementation issues, employers' reporting requirements, the enforcement of the Act, and the establishment of what the Committee labelled as a "National Employment Equity Strategy.[67] The report contains thirty-one recommendations for changes to the Act, a number of which featured two or more sub-recommendations. A brief review of the major recommendations follows.

The Scope of the Act

Essentially, the Committee advocated broadening the scope of the Act to include Parliament, including the House of Commons, the Senate, and the Parliamentary Library; all federal agencies, boards, and commissions; the federal public service; the RCMP, and the country's armed forces. It also advocated lowering the threshold at which all federally regulated employers became subject to the Act from one hundred to seventy-five; that judicial and Governor-in-Council appointments be made subject to the Act; and that the staff of all federal political parties be made to conform to the Act. It also recommended no other designated groups be created under the Act and that target group members continue to be exempted from identifying themselves as such.[68] As will be seen later in this chapter, the scope of the Act was later significantly expanded to reflect these very proposals.

The Implementation of the Act

The Committee recommended expanding the scope of the Regulations under the Act so as to establish more precise standards for employers to meet and that employer plans submitted to, and approved by, state agents be made binding on those employers. It also recommended that Statistics Canada be required to develop more refined statistical measures in order to facilitate the analysis of employer efforts as part of the administration of the Act. It also advocated that the Act's enforcement agency have the power to eliminate employer-union agreed-to seniority clauses in favour of employment equity measures.[69]

Employers' Reporting Requirements

Generally speaking, the Committee advocated that no changes be made to the existing requirement for employers to report to government on a yearly basis nor in the numbers-based structure of the reporting system in place at that time. It did, however, agree that employers with fewer than seventy-five employees be permitted to use a shorter, simplified version of the regular employer reporting system. It also strongly urged the federal government to take the lead in establishing standardized employer employment equity program survey forms and reporting systems for all provincial and municipal governments so as to facilitate the compliance monitoring of employers by governments while simultaneously reducing the burden of paperwork duplication for employers.[70]

The Enforcement of the Act

In essence, the Special Committee recommended that the monitoring and enforcement functions essential to the effective administration of the Act be assigned to two separate state agencies: with the then Employment and Immigration Commission assigned the monitoring function and the Canadian Human Rights Commission being made responsible for the enforcement of the Act. In what could be considered bureaucratic overkill, the Committee proposed that Labour Canada be given the authority and mandate to monitor Employment and Immigration's discharge of its responsibility for monitoring employers. Finally, the Committee advocated that any deviance from any provision of the Act by an employer be treated as a separate offense, subject to fines of up to $50,000. As will be evident later, much of this approach is now reflected in the Act, as amended in 1996.

Establishing a National Employment Equity Strategy Task Force

Finally, based on its contention that designated group members had not benefited significantly in the half decade the Act had been in force, the Special Committee recommended that the federal government take the lead role in establishing what it termed a National Employment Equity Strategy Task Force to include provincial governments, target groups, employers, and organized labour. Specifically, it proposed that such a task force seek to enhance educational and training support for target group members, including cross-cultural training; to ensure sufficient funding for training and other job-related support services, to find ways to help for small employers willing to hire designated group members, to ease the difficulties encountered by immigrants in obtaining Canadian accreditation for their foreign credentials, to establish a national data base of designated group members for use by employers, and to review the eligibility criteria for state-funded training programs so as to allow more pressure group members to take advantage of them.

The net effect of these recommendations, if implemented, would have been to expand the scope of the Act, to introduce a more intrusive administrative system, to expand the employer reporting requirements under the Act, to broaden and amplify the enforcement mechanisms of the Act, and to set up an agency representing all stakeholders to promote employment equity. As will be evident in the material presented in the next section, a number of the Special Committee's major recommendations found their way into the revised act of 1996.

Report of the Standing Committee on Human Rights and the Status of Persons With Disabilities

Perhaps distracted by the uncertainties generated by the change in the leadership of the Progressive Conservative Party at this time,[71] neither the Mulroney government nor the Campbell administration which succeeded it moved to act on the recommendations of the Special Committee, referred to in detail in the foregoing section, to amend the Employment Equity Act. Nor did the Chrétien government, elected in October, 1993, act on that committee's recommendations without first authorizing the House of Commons Standing Committee on Human Rights and the Status of Disabled Persons to once again review the operation and effectiveness of the 1986 Act, as well as the provisions of Bill C-64, the Liberal government's initial proposal to amend that Act.

As was the case with the 1991 Special Committee, the Standing Committee invited representations from a selected number of groups representing women, native people, disabled persons, and members of visible minorities, and in roughly the same proportions as the Special Committee. The Standing Committee also sought the views of groups representing employers and organized labour, as well as from a limited number of non-governmental bodies considered to have an interest in workplace affirmative action. It also invited some thirty-four persons representing fourteen different government institutions to appear before it. In addition, a total of eighteen written briefs were received by the Standing Committee.

The Standing Committee prepared thirty-seven recommendations for changes to the existing Act for consideration by the government, including twenty-four amendments to the government's Bill C-64. These recommendations, not every one of which was adopted, formed the basis for the enactment of the revised and expanded version of the Act proclaimed in 1996. The revised Act not only brought federal government departments, agencies, and boards under its jurisdiction but it also imposed a number of significant new administrative and operational demands on employers, as well as greatly enhancing the enforcement mandate of the state.

Like the report of the Special Committee before it, the Standing Committee Report adopted many of the Abella Commission's premises with respect to the workings of labour markets in Canada. Like the Abella Commission, it rejected the notion that labour markets, left to themselves, can ensure equal workplace opportunities for members of the Act's designated groups.[72] In addition, like the Abella Commission, the Standing Committee Report equated the absence of statistical parity between the number of designated group members in an employer's workforce and their numbers in the labour market as prima facie evidence of discrimination in the workplace.[73] It also reiterated the position, drawn from the Abella Commission, that voluntary measures were ineffective in securing equality on the job for pressure group members and linked the introduction of legislated workplace affirmative action to the attainment of social justice for such members.[74] This acceptance of the fundamental assumptions upon which the Abella Commission based its conclusions and recommendations demonstrates the extent to which the ideas generated by that Commission had in less than a decade become embedded not only in the law of the land, but perhaps more importantly, in the consciousness of many legislators.

Nonetheless, the case of the Standing Committee illustrates that successful embedding can be an uneven process. For example, in a minority report, the Reform Party of Canada representatives on the Committee categorically rejected a key assumption advanced by the Committee, namely, that of the Abella Commission's notion of systemic discrimination:[75] that is, a disadvantage suffered, not because of wilful intention but rather one that results from the operation of systems that are on their face neutral.[76] It also rejected the premise that equality on the job entailed "equality of numerical representation in the workforce"[77] and argued that under-representation in the workforce by members of the Act's target groups did not necessarily entail discrimination and that factors such as age, education, and experience are important determinants of success on the job.[78] In addition, it argued that the kind of legislated workplace affirmative action embodied in the Act was a form of preferential hiring[79] which amounted to reverse discrimination in favour of members of the Act's designated groups,[80] that the provisions of the Act negated the merit principle, [81] that the Act, while ostensibly prohibiting the setting up of quotas for designated group members, in effect established them in practice,[82] that employment equity amounted to no more than a "costly tax on business,"[83] and that no consideration whatsoever had been given to repealing the Act in its entirety.[84] As an alternative to the provisions of the Act, the Party proposed that labour market decisions be the determining criteria in allocating employment benefits in Canada,[85] an option rejected by a majority of the members of the Standing Committee.[86]

The 1996 Employment Equity Act and Regulations

The 1996 Act

Like its predecessor, the Employment Equity Act of 1996 designates women, aboriginal people, disabled persons, and members of visible minorities as classes of individuals eligible for protection in the labour market. Like its predecessor, it obliges employers covered by the

Act to identify and eliminate employment barriers to members of designated groups in their establishments. It also stipulates that they institute "positive" employment equity measures which ensure that the proportion of members of its designated groups on their staffs conform to their proportion in the labour market from which employers draw their workforces. It also requires employers to prepare annual employment equity plans and reports for scrutiny and approval by state agents. Like its predecessor, it requires employers to certify to the accuracy of the data they provide the state. The 1996 Act also authorizes the Governor-in-Council to make Regulations with respect to a whole range of specified matters and provides sanctions for employers who fail to comply with its provisions. The purpose of this part is not, however, to provide an exhaustive review of the provisions of the 1996 Employment Equity Act, since they mirror in most respects those of its predecessor. Rather, it is to illustrate how it differs from that predecessor.

In what can be best described as regulatory drift,[87] an important difference between the 1986 Act and its successor is the generality and open-endedness of the text in the first compared to the comprehensiveness, scope, and specificity of the language which characterized the second. For example the 1986 Act consisted of no more than fourteen rather short sections. By contrast, its 1996 successor boasts of forty-five, most of which are generally more specific and extensive in terms of what is required of employers, as opposed to what was found in its predecessor. Part of the reason for this change was the Chrétien government's decision to make all federal agencies, bodies, and departments, including the RCMP and the military, subject to the Act, something the earlier Act did not do. Several more sections were added to the 1996 Act to give effect to the government's decision to assign responsibility for enforcing the Act to the Canadian Human Rights Commission (CHRC) and the task of promoting employment equity amongst employers to the Human Resources Development Canada (HRDC) department. Assigning the enforcement responsibility for the enforcement of the Act signalled three important changes in government policy. First, it meant that the after more than a decade the government had finally adopted one of the Abella Commission's major recommendations, one virtually unanimously supported by target groups and organized labour: namely to have the CHRC enforce the Act. Second, it signalled that CHRC had emerged victorious in its bureaucratic turf war with HRDC. Third, it signalled another defeat for employer interests, which had favoured according HRDC the primary role in the administration of the Act.

Besides the foregoing, Sections 6,7,8, and 33 of the 1996 Act contain exculpatory provisions which relieve employers from the obligation to act in ways which would be detrimental to their businesses or override the seniority provisions in their collective agreements. It also allows native groups to hire only natives under certain circumstances. There were no similar exculpatory sections in the original Act or Regulations. Moreover, not only does the 1996 Act feature expanded sections, it also contains a number of provisions obliging employers to do things not required of them by the original Act or Regulations. For instance, Sections 10 to 15, inclusive, require employers to identify their employment equity short-term policies, practices and measures to correct the inadequacies in their staffing practices. It also requires them to take into account a number of factors not called for in the original Act when developing employment equity measures in their enterprises. In addition, it obliges them to ensure that any employment equity plans they develop ensure"reasonable progress" in meeting the requirements of the Act; to make "reasonable efforts" to implement their employment equity plans, including monitoring them on a regular basis; to review and revise their employment equity plans at least once during the year they are in effect; and to actively promote employment equity in the workplace.

In addition, Sections 23 to 32, inclusive, and 35 to 40, inclusive, of the 1996 Act specify in detail the mechanisms and procedures available to the Canadian Human Rights Commission to enforce employer compliance with the Act. The original Act had provided for fines of up to fifty thousand dollars upon a summary conviction of non-compliance with the obligation to file a yearly report but was silent on how this provision was to be enforced. The 1996 Act, on the other hand, not only defines non-compliance as a violation of the Act but in addition Section 35(2) stipulates that such a violation which continues for more than one day "constitutes a separate violation for each day on which it is committed or continued." Moreover, Section 36(2) imposes fines of up to $10,000 for a single violation and of up to $50,000 for "repeated or continued violations." This means that an employer declared in violation of Section 18 of the Act (which obliges employers to file an employment equity report satisfactory to the government) for a period of no more than two weeks would conceivably face financial penalties of $660,000. The 1996 Act also provides for an appeal process for employers, something not provided for in its predecessor.

The 1996 Regulations

Like the Act under which they were promulgated, the 1996 Employment Equity Regulations are both more extensive and specific than their 1986 predecessors. For example, whereas the 1986 Regulations contained twenty sections, their 1996 successors have thirty-one. Part of the reason for this is the Chrétien administration's decision to make federal government departments and agencies subject to the Act. Consequently, the later Regulations require different directives for private and public sector employers in order to accommodate the differing legislation under which these sectors operate with respect to employment matters. The 1996 Regulations also feature a somewhat differently arranged and expanded (from 502 to 532 items) Schedule of Occupational Groups that employers are obliged to use in preparing the Employment Equity Reports. This includes a Schedule of Occupational Groups to take into account occupations specific to governments, such as translators, air traffic controllers, corrections officers, and the like.

But perhaps the feature which distinguishes the 1996 Regulations from their predecessors of a decade earlier is the specificity of the requirements imposed on employers. This includes specifying how the threshold number of one hundred, which renders employers subject to the Act, is to be calculated. They also prescribe the manner in which workforce information was to be collected by employers and how the workforce analysis required of employers is to be conducted. In addition, they prescribe the way in which employers are to review their employment systems, policies, and practices. The regulations also stipulate in detail the nature and scope of the employment equity records required of employers and specify precisely how long such records are to be retained. Lastly they prescribe in detail the manner in which the documents called for from employers are to be submitted to state agents.

The 1996 Federal Contractors Program:

Although the requirements of the 1996 Federal Contractors Program (contract compliance) are virtually identical to those of its predecessor, there is one major difference between the two. The earlier contract compliance program existed as government policy; the second is enshrined in legislation in the 1996 Act. The earlier one could have been amended, or even ended, by a simple order-in-council: not so the in the case of the Act. There are, in addition, two interesting changes. First, the earlier program required employers to retain a record of their employment equity plans and activities for review by state agents during on-site compliance reviews. The equivalent requirement in the later program called for the retention of such records for review by state officials. This implies that for the purposes of the later program state agents would not have to be on site to gain access to employer records. Second, the earlier program called for the minister responsible to be advised of the results of an appeal review of the findings of a compliance review of an employer's employment equity project. The 1996 program stipulates that the independent review will "advise the minister." This suggests that the independent review will now be required to advise the responsible minister on what action is to be taken.

Employment Equity Guidelines

The original employment equity guidelines for employers were developed by the Canada Employment and Immigration Commission following the proclamation of the Employment Equity Act in 1986. Their contents were consistent with the requirements of that Act, its Regulations, and the Federal Contractors Program and need not be repeated here. The same is true of the Guidelines developed for the revised Act of 1996. Nonetheless, there are significant differences between the two. The initial guidelines were prepared with only employers in mind. They were contained in a twenty-seven page bulletin which outlined the federal government's reasons for launching that initiative, and brief statements explaining what the government understood to be systemic barriers, special measures, and reasonable accommodation. In addition, it briefly described the government's intentions with respect to the manner in which employers were to plan for, organize, manage, and maintain the changes in their personnel practices required under the Act.

In contrast, the employment equity guidelines which were developed for use with the revised Act of 1996 are aimed not only at employers but also at employees, unions, pressure groups, community organizations, private sector personnel practitioners, and human resource consultants. In a classic case of bureaucratic distention, these guidelines take up roughly four hundred and fifty pages of minutely detailed and explicit instructions grouped into eleven separate sections. They include background information on the Employment Equity Act, information on the employer compliance features of the Act and Regulations, including the role of the Canadian Human Rights Commission in the process, and the communications strategies to be used by employers in planning for and implementing employment equity in their workplaces. They also include steps to be taken by employers in consulting with their staff, procedures to utilize in conducting workforce surveys and analyses, processes that employers are to use in reviewing their personnel practices, and methods employers to employ to prepare an employment equity plan. These guidelines also indicate how employers are to monitor and assess the results of their employment equity plans, the kinds of records they are required to keep, and how they are to prepare the annual reports they are obliged to submit to the government. The guidelines also contain a section which refers specifically how the legislation is to be applied to employers serving the interests of aboriginals. The sixteen fold increase in the length of these guidelines not only stands as a monument to bureaucratic distention but also belies Minister MacDonald's promise in 1985 that the introduction of workplace affirmative action would not impose excessive administrative burdens on employers.

The 2002 Review of the Employment Equity Act

Pursuant to the Provisions of Section 44(1) of the Employment Equity Act, of 1996 the Parliament authorized its Standing Committee on Human Resource Development and the Status of Persons with Disabilities to review the operations and effectiveness of that Act. In June of 2002 the Committee reported to the House of Commons with a document entitled Promoting Equality in the Federal Jurisdiction.[88] As was the case with the two previous reviews of the Act, the responsible committee interviewed roughly one hundred persons representing fifty-seven groups (women, native people, disabled persons, and members of visible minorities), employer organizations, labour unions, non-governmental organizations, and individuals.[89] It also received forty-five formal briefs from amongst the same groups and individuals.[90]

Unlike the previous two reviews of the Act, each of which recommended significant changes to its provisions, the 2002 report does not, in its words, "call for a significant departure from the Act at this time."[91] Rather, its recommendations amount to proposals for "fine-tuning administrative processes, clarifying legislative ambiguities, enhancing awareness, and supporting the labour market needs of disadvantaged workers."[92] Nonetheless, it calls for greater efforts to assist native people and persons with disabilities to succeed in the labour market,[93] more state initiatives to promote employment equity amongst employers,[94] funding for voluntary organizations so they can provide designated group members with entry level work experience,[95] funding for language training for immigrants,[96] federal government efforts to pressure provinces and professional associations to recognize foreign professional credentials,[97] and that Senate and House of Commons staff (excluding the personal staff of senators and members of Parliament) be made subject to the Act,[98] amongst others. The Report also proposed redefining the term "persons with disabilities" to include not only individuals with objectively verified disabilities but also those who consider themselves disadvantaged in the labour market because of a disability or who believe that employers would consider them disabled.[99] It also proposed that the Act be amended so as to take into account the problems facing individuals who were members of more than one designated group.[100] This represents a progressive broadening and deepening of the scope and reach of the act: something which can be characterized as "legislative distention." Finally, curiously, in view of the Committee's recommendation that the federal government pressure provinces and professional associations to recognize foreign professional credentials, the report also emphasizes that any federal government initiative to ensure employers hire, accommodate, and train native people and persons with disabilities must respect the constitutional jurisdiction of the provinces.[101]

Many of the recommendations and proposals outlined in the preceding paragraph move beyond the strict application of a workplace affirmative action regime: that is, to limit its reach to solely employment matters. However, they are consistent with some of the ideas and recommendations found in the Abella Commission Report with respect to education, employment training, and special services for immigrants and native people. In addition, the underlying assumptions about the experience of members of the Act's target groups in the labour market found in the Abella Report reappear in the 2002 report. Thus, the Abella Report's contention that the absence of parity between the proportion of designated group members in an employer's workforce is to be regarded as prima facie evidence of discrimination resurfaces as the statement in the 2002 report that "A representational ratio that is less than one implies under-representation,"[102] and the report's assertion that a representative workforce is one "...in which the proportion of employed members of a designated group is equal to, or greater than, that group's share of the labour force...."[103]

Like the Reform Party before it, the Canadian Alliance representatives on the Standing Committee presented a minority report. Two aspects of this report suggest a more secure embedding of the ideas on workplace affirmative action into the governance institutions of the state, particularly the elected officials of which they are partly composed. First, unlike the Reform Party in the case of the 1995 review of the Act which was allowed a dissenting minority report of nearly a third the length of the Standing Committee's final report,[104] the Canadian Alliance was allowed no more than two pages for its dissenting report.[105] Second, and more importantly, unlike the Reform Party before it, in its minority report, the Canadian Alliance did not question the fundamental assumptions underlying the need for workplace affirmative action. Indeed, it implicitly agreed in principle that workplace discrimination did exist in the sense that it argued that the courts provided sufficient protection against this.[106] Rather it sought to limit the expansion of the scope and reach of the Act. For example, the Alliance opposed the Committee's recommendations that the House of Commons and the Senate be made subject to the Act,[107] proposed that the armed forces, the RCMP, and CSIS all be exempt from the provisions of the Act,[108] opposed those Committee recommendations which it deemed would make the system more bureaucratic and complex,[109] and rejected the Committee's recommendations to increase funding in support of any employment equity initiative.

The government released its response to the Standing Committee's recommendations in November of 2002.[110] While emphasizing its continued commitment to promoting workplace affirmative action, the government did not give any indication that it intended to modify the Act, nor to provide additional funding for its promotion and administration, and to date there is no evidence that the government has moved to do either.

Dissent

Although on its face the Employment Equity Act calls for a significant change in the manner in which employers falling under its jurisdiction hire, train, and promote their staffs, it has been criticized as highly ineffective in achieving its objectives. For example, in a 1995 article, Janet Lum criticizes the Act on the basis that it has failed to achieve its objectives because of fundamental flaws in its implementation requirements. In her view, this means that employers falling under its jurisdiction made no progress towards introducing employment equity into their enterprises.[111] Here, Lum adopts the position found in the Act, which for implementation purposes, defines employment equity as the condition where the proportion of designated group members in an employer's workforce is equal to their representation in the labour force, as her criterion for assessing the Act's effectiveness. Lum's critique also generally reflects the comments made by Opposition Party members during the Second Reading of Bill C-62: that is, that the Act lacks an independent and effective enforcement mechanism and precise objectives and timetables for action.[112] In her article, Lum uses the experience of the five large banks in Canada as an example of the lack of progress towards the Act's objective of employment equity: that is, full parity between the proportion of target group members in an employer's workforce and their representation in the labour force. Based on her analysis of the record of these banks in implementing workplace affirmative action in conformity with the Act, she concludes that this experience suggests that nothing much had changed in the "pervasiveness and dominance of ... [the] corporate culture [of these employers], particularly in respect accorded to the rights of employers" as a result of the introduction of the Employment Equity Act.[113] Essentially, her core argument is that the outcomes resulting from the introduction of that act failed to meet its intended objectives because of the limitations of the Act itself.

In her critique, Lum does not deal explicitly with the notion (implicit in her criticism) that in crafting its employment equity legislation the Mulroney government's embrace of the principle of workplace affirmative action may have been no more than symbolic or was perhaps an example of friendly regulation. While evidence of what the government's real intentions were can never be known for certain, there are indications that one or both of these notions may explain to some extent Lum's contention that the introduction of the Act did not result in a significant change in working conditions for members of the Act's designated groups employed by the five banks she surveyed. For example, as Savoie has noted, Prime Minister Mulroney favoured less government intervention in the economy[114] and this may have moved the government to give the responsibility for implementing the Act to an already existing department, instead of creating an agency to deal specifically with workplace affirmative action, (as suggested in one the enforcement models proposed in the Abella Report[115]) and did not create an independent enforcement agency or assign that task to the Canadian Human Rights Commission, as advocated by the designated groups. This can be interpreted as an indication that in crafting its employment equity legislation the Mulroney administration may have opted for symbolism instead of the substance favoured by proponents of workplace affirmative action. Similarly, in outlining the government's response to the recommendations of the Abella Commission, Minister MacDonald indicated in the House of Commons on March 8, 1985, that the government's had decided to allow employers to develop employment equity plans consistent with their needs (subject to some regulation) and that the government did not intend that there should be "major administrative costs or unnecessary and heavy handed intervention"[116] imposed on employers through legislation. In like manner, while claiming that the costs to government to implement employment equity would be minimal, a Conservative Party member that the costs to business would be "quite reasonable:"[117] that is, a case of friendly regulation.

However, it must be noted that Lum's critique of the implementation measures of the Act is based entirely on the earliest manifestation of that legislation. This article was published in early 1995 and was presumably researched and written some time in 1993 or 1994 (The 1992 Report of the Parliamentary Committee reviewing the Act is referred to in the article and the latest data presented is for 1992), but well before the coming into force of the revised Act on October 24, 1996. As indicated earlier in this chapter, the revised Act of 1996 differs substantially from its 1986 predecessor in ways that addressed at least some of Lum's concerns. As Timpson has indicated, the Chrétien administration broadened both the scope and mandate of the Act.[118] This included not only bringing the federal public service, the RCMP, and the military within the jurisdiction of the Act[119] but also according the Canadian Human Rights Commission the responsibility for enforcing the Act (a move long advocated by proponents of employment equity), as well as enshrining a set of much more comprehensive and detailed compliance requirements on employers directly into the Act itself. These changes address at least some of Lum's criticisms.

Three examples of the changes to the Act in 1996 of concern to Lum are considered here. First, she is critical of the fact that the Act lacks a credible enforcement mechanism.[120] However, the revised Act, proclaimed in 1996, makes the Canadian Human Rights

Commission its official enforcer and accords it specific powers to carry out this function, a move Lum herself supports.[121] Second, she criticizes the Act for its lack of precision in establishing legislated standards for employers to comply with.[122] While it is true that the original Act does not specify in precise detail the number of designated group members employers are required to hire, train, and promote in all areas of their enterprises, it does, in effect, stipulate a standard to be adhered to: proportional representation in an employer's workforce for designated group members.[123] Moreover, Article 3 of the 1996 Act addresses many of the definitional concerns voiced by Lum in addition to specifying in greater detail the obligations imposed on employers. Third, as part of her argument, Lum indicates at one point that "how and when this (the employers employment equity plan required under Article 5 of the 1986 Act) is done, in what format, and by what standards is left to the employer's discretion."[124] This is not entirely accurate. While that article did indeed not require employers to follow a prescribed and detailed plan specified in the legislation or regulations in setting out their goals for implementing employment equity, it did, nevertheless, specify that such plans were to be prepared on a yearly basis and obliged employers to include in those plans a timetable for their implementation. Lum's concern on this particular issue is largely addressed in Articles 10, 11, 12, and 13 of the revised Act, which specify in detail the procedures to be used by employers in preparing and administering their employment equity plans.

Lum's critique focuses solely on what she argues are the shortcomings of the Act itself with respect to its implementation. However, that approach, while valid, fails to take into account other possible reasons for the Act's failure to achieve the results intended. For example, the federal government announced in July, 2001 (five years after the revised Act was proclaimed) that it was implementing a mandatory policy of hiring, training, and promoting visible minority members so as to increase their numbers in the public service to twenty per cent of the total over the following three years.[125] The reason given for this policy was "to help increase the slumping numbers of minorities within the civil service and better reflect the ethnic makeup of the Canadian population."[126] This announcement also suggested that part of the reason for the failure to achieve the desired results included the hiring freezes and downsizing of the civil service during the 1990's.[127] A year later, a report commissioned by Human Resources Development Canada showed that the Federal Contractors Program, which obliges businesses who supply goods and services to the government to hire, train, and promote designated group members in accordance with the provisions of the Act, had also failed to achieve the intended results. This report attributed this to a cut in the staff assigned to administer the program.[128] Thus, even though the Act was changed to address some of its failings identified by Lum, it still failed to achieve its intended results, largely because external circumstances that had little to do with the implementation provisions of the Act.

The Mulroney government's government's response to the Abella Commission Report was in some sense the kind of political balancing act engaged in by governments under pressure to act by influential groups with contending interests. It is also likely a reflection of the influence of the contending policy discourses referred to by Bradford in his analysis of the work of the Gordon Commission.[129] This means that the Mulroney government (particularly those in Cabinet who were interested in protecting business from "further government regulation,"[130]) was reluctant to impose by legislation the kind of regulatory control measures and administrative costs on employers advocated by the proponents of legislated workplace affirmative action. This reluctance appears to have held under the Chrétien administration, which introduced exculpatory articles into the Act favouring employers,[131] despite the fact that it broadened both the scope and mandate of the Act. Lum also ignores the possibility that bureaucratic inertia may have been partly responsible for the lack of progress she decries. Timpson notes, for instance, that the senior public servant responsible for employment equity programs within HRDC has suggested that too comprehensive a scope and too strict a compliance regime would create a "compliance nightmare"[132] that would do more harm than good. Also, Timpson notes that Minister Axworthy encountered significant resistance from "the mandarins within the Departments of Finance, the Treasury Board, and the Privy Council Office"[133] and outside of government[134] in persuading the government to establish the Abella Commission with what he considered acceptable terms of reference.

Finally, a word about the Act's outcomes. Lum's argument is essentially that from the moment of its enactment in 1986 to 1992, when the data for the article was collected, the application of the Employment Equity Act failed to achieve its objective, namely that of ensuring that the proportion of target group members in the workforces of employers subject to that legislation reflected their representation in the nation's labour force. As indicated in Chapter One, consideration of the effects of the Act on employer behaviour in response to the Act (while undoubtedly a matter of interest from a public policy perspective) is beyond the scope of this investigation. Nonetheless, a brief review of the consolidation of employer efforts to conform to the Act tabled annually in Parliament, suggests that this legislation has perhaps had a greater impact than an uncritical reading of Lum's argument might suggest. Two brief examples are provided.

First, the data from the annual reports to Parliament on the implementation of the Act indicate that employed women earned, on average, only 67.3 per cent of what men earned in 1987,[135] as opposed to earning, on average, 79.4 per cent of what men earned for full-time work in 2001.[136] This is certainly not the full parity sought by those advocating workplace affirmative action as a remedy for wage discrepancies between men and women, but it does represent a marked decrease in that disparity, with the average wages of women rising roughly 18.0 per cent as compared with the earnings of men between 1987 and 2001. Second, the data in these reports shows a significant increase in the representation of women in the occupational categories of "upper level managers" (referred to in the reports of 1998 and later on as "senior managers") in enterprises subject to the Act.[137] Thus, the 1988 report indicates that only 4.6 per cent of women in those enterprises were to be found in the category of "upper level managers" as opposed to the19.6 per cent of "senior managers" revealed in the 2002 report. Similarly, the proportion of women in the "middle and other managers" category increased from 30.4 per cent in the 1988 report to 42.4 per cent in its 2002 counterpart.[138] These are not negligible changes, particularly with respect to women's representation in the "senior managers" category. Whether these changes are entirely attributable to the application of the Act or to some other factor is a consideration beyond the scope of this enquiry, but the existence of the Act can be assumed to have had some positive effect.

Summation

The extension of the scope of the Employment Equity Act described in this chapter speaks to the continued influence of the supporting coalition which was instrumental in persuading the Mulroney administration to introduce legislated mandatory workplace affirmative in that it was also able to convince its successor Chrétien government to bring it much closer in line with both the declared positions of those groups and the recommendations of the Abella Commission. It also points to the success of the Abella Commission in convincing both elected and appointed officials of the benefits of legislating a much more active role for the state in regulating labour markets in Canada.[139] This is particularly significant because it came at a time when virtually all governments in Canada were both downsizing their bureaucracies and casting off or privatising some of the tasks they had earlier undertaken. This expansion of the scope of the Act also came at a time when the notion of the expansion of state intervention in economic matters came under attack in Parliament from a newly-emerged Reform Party. In that kind of political and social environment, these are not inconsiderable gains.

The extension of the scope of this legislation illustrates the continuing presence in Canada of Bradford's two opposing discourses in the nation's political life.[140] And in this case it indicates that the clear winner with respect to workplace regulation was what he has called the interventionist-nationalist discourse.[141] Moreover, it indicates which interests won or lost in the debate about the introduction of workplace affirmative action in this country. It shows that the clear winners were the designated groups. In its 1996 manifestation, the Act mirrors most closely (though certainly not completely) the concerns and aspirations of women's groups, and to a lesser extent, those of visible minority groups. The revised Act also still does not please every one of these groups in every respect, but it does come much closer to what they advocated than did its 1986 predecessor. On the other hand, there is still nothing in the 1996 Act which addresses the objective of native groups for native-controlled, state-subsidized economic development initiatives as the primary means for creating employment for native people. Likewise, organized labour still has not yet achieved its twin objectives of securing a formal voice in the development or amendment of this legislation nor of obtaining a legislated role (other than the right to be consulted where it is to be introduced) in its implementation in the workplace. Again, the clear losers were the employers. They failed to regain their traditional ability to hire on the basis of their preferences, whatever those preferences might be. They also failed to persuade lawmakers to allow them to count those designated group members on their staffs as part of their compliance to the provisions of the act in cases where such individuals refused to so identify themselves or allow their employers to do so. Moreover, under the revised Act they were confronted with extra administrative burdens.

The 1996 version of that Act more closely follows the recommendations of the Abella Report than did its 1986 predecessor, possibly because Lloyd Axworthy, the Liberal cabinet minister who originally secured Cabinet approval to create the Abella Commission in the first place was,[142] after 1993, back in Cabinet as Minister of Human Resources Development Canada, the successor to the Employment and Immigration Commission, and also then responsible for the administration of the original Act. Nor did the original Act apply to federal government departments. This is, however, provided for in the 1996 Act. Nor yet have successive federal governments enacted the kind of omnibus "equal pay for work of equal value" legislation nor the state-supported daycare programs advocated by Justice Abella. On the other hand, the 1996 Act does provide the Canadian Human Rights Commission with the authority over the enforcement of the Act, as first proposed by Justice Abella. In addition, the later Act, given its greater complexity and scope, is vastly more complex to administer and conform to than its predecessor.

Lastly, the material presented in this chapter illustrates the extent to which the Abella Commission succeeded in embedding its basic philosophy and many of its implementation ideas into the governance institutions of the nation by virtue of the fact that both are reflected directly in the provisions of the Employment Equity Act. But perhaps more significantly, both have become the "conventional wisdom"[143] which now forms the basis for any discussion of the experience of the Act's target groups in the labour market. With the exception of the Reform Party's minority report which formed part of the report of the committee which conducted the 1995 review of the Act, the material presented here demonstrates a progressively greater acceptance by elected officials, organized labour representatives, and even some sectors of the employer community, of the fundamental public philosophy developed by the Abella Commission which promoted the increased intervention of the state in the labour markets of the nation. It also demonstrates their willingness to adopt many of the implementation measures arising from that philosophy. This material also indicates that the ideas about the workplace condition of women first articulated in 1970 by the Royal Commission on the Status of Women in Canada, then refined and expanded over the next decade to include native people, disabled persons, and members of visible minorities, served as the intellectual template for the introduction of workplace affirmative action in Canada. Similarly, it indicates that the Abella Commission was successful in creating a supportive alliance of pressure groups, politicians, and bureaucrats sufficiently cohesive to maintain that support over time and influential enough to ensure the enlargement in the nature and scope of the original Act when this was reviewed by Parliamentary Committees in 1991, 1995, and 2002.

The following and final chapter summarizes and analyzes the findings of the research upon which this dissertation is based.

1. Record of the deliberations of the Special Committee on the Review of the Employment Equity Act, Day 1 Sitting Record, p. 3.

   Hereafter, this will be referred to as "Special Committee."
2. Special Committee, Day 10 Sitting Record, p. 26.
3. Special Committee, Day 1 Sitting Record, p. 20.
4. Special Committee, Day 14 Sitting Record, p. 17.
5. Special Committee, Day 13 Sitting Record, pp. 34-43.
6. Special Committee, Day 1 Sitting Record, p. 21.
7. Special Committee, Day 8 Sitting Record, p. 26.
8. Special Committee, Day 11 Sitting Record, p. 37.
9. Special Committee, Day 14 Sitting Record, p. 7.
10. Special Committee, Day 14 Sitting Record, p. 30.
11. Special Committee, Day 15 Sitting Record, p. 27.
12. Special Committee, Day 12 Sitting Record, p. 11.
13. Special Committee, Day 9 Sitting Record, p. 7.
14. Special Committee, Day 9 Sitting Record, p. 48.
15. Special Committee, Day 10 Sitting Record, p. 26.
16. Special Committee, Day 12 Sitting Record, p. 22.
17. Special Committee, Day 7 Sitting Record, p. 5.
18. Special Committee, Day 8 Sitting Record, p. 35.
19. Special Committee, Day 13 Sitting Record, p. 16.
20. Special Committee, Day 15 Sitting Record, p. 53.
21. Special Committee, Day 13 Sitting Record, p. 44.
22. Special Committee, Day 14 Sitting Record, p. 43.

23. Special Committee, Day 14 Sitting Record, p. 41.

24. Special Committee, Day 2 Sitting Record, p. 26.

25. Ibid.

26. Ibid.

27. Ibid.

28. Special Committee, Day 3 Sitting Record, p. 44.

29. Special Committee, Day 4 Sitting Record, p. 7.

30. Special Committee, Day 4 Sitting Record, p. 8.

31. Special Committee, Day 4 Sitting Record, p. 10.

32. Special Committee, Day 4 Sitting record, pp. 16-17.

33. Ibid.

34. Special Committee, Day 4 Sitting Record, p. 15.

35. Ibid.

36. Special Committee, Day 4 Sitting Record, p. 18.

37. John Kenneth Galbraith, The Affluent Society, 2nd Ed., (Boston: Houghton Mifflin Company, 1969), pp. 6-19.

38. Op. Cit., p. 10.

39. Special Committee, Day 2 Sitting Record, p. 30.

40. Special Committee, Day 2 Sitting Record, p. 10.

41. Special Committee, Day 8 Sitting Record, p. 41.

42. Special Committee, Day 12 Sitting Record, pp. 5-6.

43. Special Committee, Day 7 Sitting Record, p. 23.

44. Special Committee, Day 12 Sitting Record, p. 5.

45. Special Committee, Day 13 Sitting Record, p. 14.

46. Special Committee, Day 7 Sitting Record, p. 23.

47. Special Committee, Day 8 Sitting Record, p. 37.

48. Special Committee, Day 14 Sitting Record, p. 5.

49. Op. Cit., p. 30.

50. Op. Cit., p. 39.

51. Special Committee, Day 11 Sitting Record, p. 23.

52. Special Committee, Day 13 Sitting Record, p. 30.

53. Special Committee, Day 11 Sitting Record, p. 8.

54. Special Committee, Day 15 Sitting Record, p. 52.

55. Op. Cit., p. 23.

56. Special Committee, Day 7 Sitting Record, p. 13.

57. Op. Cit., p. 13.

58. Special Committee, Day 12 Sitting Record, p. 21.

59. Special Committee, Day 15 Sitting Record, pp. 40-41.

60. Special Committee, Day 10 Sitting Record, p. 20.

61. Special Committee, Day 3 Sitting Record, p. 48.

62. Special Committee, Day 9 Sitting Record, p. 7.

63. Op. Cit., p. 17.

64. Special Committee, Day 12 Sitting Record, p. 23.

65. A Matter of Fairness: Report of the Special Committee on the Review of the Employment Equity Act, (Ottawa: House of Commons, 1992)

66. A Matter of Fairness, p. xxii

67. A Matter of Fairness, pp. xiii-xix.

68. A Matter of Fairness, pp. 5-9.

69. A Matter of Fairness, pp. 13-17.

70. A Matter of Fairness, pp. 22-25.

71. For a detailed perspective on the tribulations of the Progressive Conservative government in its final year in office, see David McLaughlin, Poisoned Chalice: The Last Campaign of the Progressive Conservative Party, (Toronto: Dundurn Press, 1994).

72. Employment Equity: A Commitment to Merit, (Ottawa: House of Commons, 1995), p. 8.

73. Ibid.

74. Ibid.

75. A Commitment to Merit, p. 67.

76. Abella Report, p. 9.

77. A Commitment to Merit, p. 68.

78. A Commitment to Merit, pp. 70-71.

79. A Commitment to Merit, p. 66.

80. A Commitment to Merit, pp. 72-73.

81. A Commitment to Merit, p. 74.

82. A Commitment to Merit, p. 80.

83. A Commitment to Merit, p. 77.

84. A Commitment to Merit, p. 65.

85. A Commitment to Merit, pp. 73-74.

86. A Commitment to Merit, p. 8.

87. This term is used here to designate an expansion of the sphere of influence of the administrative arm of government, generally, but not always, by increasing the complexity of administrative procedures or their moving into entirely new domains.

88. Promoting Equality in the Federal Jurisdiction: Review of the Employment Equity Act, (Ottawa: House of Commons, June, 2002).

Henceforth, this report will be referred to as: Promoting equality.

89. The data presented here is derived from the information provided in the Committee's report, pp. 79-85.

90. This data is derived from information found in the Committee's report, pp. 87-88.

91. Promoting Equality, p. 1.

92. Ibid.

93. Promoting Equality, pp. 1-2.

94. Promoting Equality, p. 2.

95. Promoting Equality, p. 9.

96. Promoting Equality, p. 21.

97. Promoting Equality, p. 23.

98. Promoting Equality, p. 27.

99. Promoting Equality, pp. 46-47.

100. Promoting Equality, p. 48.

101. Promoting Equality, p. 10. This notion forms part of the Committee's first recommendation for action.

102. Promoting Equality, p. 6.

103. Ibid.

104. The actual ratio was 18 pages allowed the Reform Party to the 62 pages of the Committee Report.

105. Promoting Equality, p. 95. The two page limit forms part of this Report.

106. Promoting Equality, p. 91.

107. Ibid..

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108. Ibid.

109. Promoting equality, p. 92.

110. Review of the Employment Equity Act: Government of Canada Response, (Ottawa: Human Resources Development Canada, 2002).

111. Janet M. Lum, "The federal Employment Equity Act: goals vs. implementation," in Canadian Public Administration, Vol. 38, No. 1, p. 45.

112. Lum, pp. 46-47.

113. Lum, p. 72.

114. Donald J. Savoie, Thatcher, Reagan, Mulroney: In Search of a New Bureaucracy, (Toronto: University of Toronto Press, 1994), p. 89.

115. Report of the Commission on Equality in Employment, (Ottawa: Minister of Supply and Services Canada, 1984), p. 215. The reference here is to the Report's Model One.

116. Debates of the House of Commons of Canada, First Session, thirty-third Parliament, (Ottawa: Queen's Printer, 1985), p. 2821.

117. Op. Cit., p. 8666.

118. Annis May Timpson, Driven Apart: Women's Employment Equality and Child Care in Canadian Public Policy, (Vancouver, BC: UBC Press, 2001), p. 174.

119. Timpson, p. 175.

120. Lum, pp. 47-48.

121. Lum, p. 73.

122. Lum, p. 47.

123. This is called for in Article 4(b) of the Act.

124. Lum, p. 47.

125. Kathryn May, "Government plan calls for increase in minority hires," in The National Post, July 7, 2000).

126. Ibid.

127. Ibid.

128. "Federal equity program's impact negligible–study," in The Edmonton Journal, July 13, 2001.

129. Neil Bradford, Commissioning Ideas: Canadian National Policy Innovation in Comparative Perspective, (Don Mills, ON: Oxford University Press, 1998), pp. 62-66.

130. Timpson, p. 98.

131. Article Six of the revised Act excuses employers from taking employment equity measures which would cause them undue hardship, to hire or promote unqualified workers or to create new positions.

132. Timpson, p. 181.

133. Timpson, p.101.

134. Timpson, p. 98.

135. Employment Equity Act: Annual Report to Parliament, (Ottawa: Minister of Supply and Services, n.d.), p. 30.

136. Annual Report: Employment Equity Act, 2002, (Ottawa: Her Majesty the Queen in Right of Canada, 2002), p. 5.

137. Lum,s complaint that "Trudging through employer reports is a frustrating and time-consuming effort." Lum, p. 49, also applies to some extent to the examination of the consolidated reports presented annually to Parliament. Not only has the terminology changed in certain instances but the construction of the tables representing the hard data were altered several times during the period from 1988 to 2002, making comparisons over time difficult.

138. See the Employment Equity Act: Annual Report to Parliament, 1988, Tables, (Ottawa: Minister of Supply and Services Canada, 1988), Table 4.1 "Distribution of Designated Groups by Occupational Group: Permanent Full-Time Employees," n.p.; and Annual Report: Employment Equity Act, 2002, (Ottawa: Her Majesty the Queen in Right of Canada, 2003), Table 5, "Designated Groups by Occupational Group in 2000 and 2001," p. 95. The data used for calculating the percentage representation of women in the senior manager and middle and other manager categories refer to the 2001 data only.

139. It is understood here that the reach of this legislation covers only federally regulated employers and enterprises supplying goods and services to the

government which are subject to the Act.

140. Neil Bradford, Commissioning Ideas: Canadian Policy Innovation in Comparative Perspective, (Toronto: Oxford University Press, 1998). See particularly pp. 61-65.

141. Bradford, p. 63.

142. For a brief account of the issues involved in the creation of the Abella Commission, see, Annis May Timpson, Driven Apart: Women's Employment Equality and Child Care in Canadian Public Policy, (Vancouver: UBC Press, 2001), pp. 97-101.

143. John Kenneth Galbraith, The Affluent Society, 2nd ed., (Boston: Houghton Mifflin Company, 1969), p. 10.

Chapter Eight

CONTENDING DISCOURSES

Introduction

The federal government's proclamation of its Employment Equity Act on August 16, 1986, marked the advent of what is arguably the most significant change in regulated employer-employee relationships since the official recognition in law in Canada of the existence of trade unions legitimized collective bargaining and provided for state regulation of those relationships. That earlier state intervention in the nation's labour markets codified employer-worker dealings with respect to layoffs, recalls, seniority arrangements, working conditions, and wages but did not affect employers' right to bring those individuals they selected into the enterprise in the first instance,[1] nor did it regulate an enterprise's decisions regarding training or promotions except as these matters fell under the ambit of a collective agreement between the parties. The Employment Equity Act changed this relationship in two important related respects. For the first time it obliged employers falling under its jurisdiction to take measures to ensure that their workforces reflected the demographic makeup of the labour force. That is, it directed them to make their workforces representative of the composition of the labour markets in which they operate. Second, it empowered the state to intervene in the labour markets of the nation to ensure that employers' hiring and promotion practices conformed to this.

This interventionist incursion into labour markets in Canada represented a major policy change for the federal government. Employers subject to the Employment Equity Act are now required to hire, train, and promote employees in all areas and at all levels of the enterprise on the basis of state mandated criteria rather than on whatever preferences they might individually have. In effect, the Act mandates the creation of representative workplaces by those employers subject to its provisions.[2] It should be noted here that the Act does not, however, require employers to hire specific individuals. In addition, Sections 6, 7, and 8 of the Act contain exculpatory provisions which may exempt employers from having to hire or promote unqualified workers, act in a manner which would cause the enterprise undue hardship, or oblige employers to create new positions in order to conform to its provisions. Nonetheless, the enactment of this legislation in 1986 and its amendment and consolidation a decade later represented a major shift in public policy in that in one important respect it shifted the authority for staffing decisions away from those responsible for the successful functioning of the enterprise to state agents with different objectives and the authority to enforce their decisions.

Conditions for Policy Change

Changes in public policy do not emerge out of a social and political vacuum. They are always generated by a particular social condition or set of circumstances. In democratic pluralistic societies like Canada, governments introduce laws in response to demands by citizens, or more precisely, to pressure by groups representing the interests of their members. Nor does this kind of change emerge overnight. Barring a disaster of some kind or the threat of war, there is normally a lengthy social discourse leading up to a major policy change. This is equally true of the introduction of workplace affirmative action legislation in Canada. The research carried out for this dissertation indicates that the advent of legislated employment equity was preceded by a gestation period that lasted nearly two decades, from the establishment of the Royal Commission on the Status of Women in Canada in 1967 to the proclamation of the Employment Equity Act in 1986.

As Berlin reminds us, movements have obscure and imperceptible beginnings.[3] Thus, to choose to attempt to identify all of the preconditions that led to the establishment of employment equity legislation in Canada would require consideration of an infinite regression of causes which would defy meaningful analysis. In conducting a study of any major public policy change, two general approaches are possible. One can either introduce a wide spectrum of factors associated with broad transformative concepts or theories that attempt to explain many, if not all, aspects of the life of a society, or one can concentrate on a detailed description of specific elements that motivate and affect change in a particular case. As useful as overarching theories or concepts may be for understanding the overall contours of a nation's political life, they are less effective in providing adequate explanations of the dynamics of change associated with a single policy issue, such as employment equity. Following Simeon, who reminds us that concepts designed to deal with broad patterns of policy formation are not necessarily useful in explaining the features of an individual case,[4] this project has concentrated on a thick and detailed description of the factors that resulted in the introduction of workplace affirmative action in Canada, without at the same time totally neglecting consideration of the background influence of broad social changes such as the shift in intergenerational values in advanced industrial states after World War II chronicled by Inglehart,[5] and with particular respect to Canada, by Nevitte.[6]

In attempting to understand specific policy changes, the notion advanced by Heclo and Bradford (that it is the interaction of ideas, interests, and institutions which is the principal determinant of public policy) is particularly useful as an exegetical instrument. For Heclo, it is the appreciation of the importance of this nexus of interaction which is crucial to a proper understanding of particular instances, rather than a reliance on each individual factor.[7] Nor, according to Heclo, does this interaction proceed in a haphazard fashion, rather, "Interests tell institutions what to do; institutions tell ideas how to survive; ideas tell interests what to mean."[8] That is, ideas about policy change must be conceived, articulated, supported by interests, and adopted into the governance institutions of the nation and by the citizenry at large, which ultimately decides whether they thrive or are cast aside. In Canada, governments have often turned to royal commissions to generate ideas for policy change.

Royal Commissions as Change Agents

For his study of the influence of three royal commissions in changing economic policy in Canada, Bradford adopts the position that while ideas are a prerequisite for generating policy change, they must also be supported by interests and work through society's institutions if they are to generate change.[9] By this he means that policy innovation results from the interaction amongst ideas, interests (politicians, bureaucrats, and pressure groups), and institutions–the formal structures created to make and implement political decisions (including, of course, royal commissions) as well as the often informal but nonetheless powerful societal understandings about how things ought to be done.[10] For Bradford, policy change is normally initiated by interests of one kind or another who promote policy ideas that favour their members, attract allies, and generate public support,[11] while institutions limit both the range of ideas advanced and the kinds of interests allowed to influence public policy decisions. Like Heclo, Bradford contends that innovative policy ideas do not become influential solely on the basis of their intrinsic merits and that the interaction amongst ideas, interests, and institutions does not operate in a random fashion but works in specific ways. For him, ideas motivate interests which act on institutions, which in turn channel both ideas and the efforts of interests in particular directions.[12]

Bradford's account also indicates that there are three interrelated factors which determine whether a royal commission's work can be considered to have stimulated public policy change. First, there must be a perceived compelling reason or reasons for changing established policies or generating entirely new ones. Second, the commission must develop a coherent philosophy with supporting implementation ideas which can command the allegiance of enough elected officials, bureaucrats, and interested pressure groups in favour of the new policy ideas for them to affect policy change. Third, its public philosophy and its associated implementation proposals must become successfully embedded in the governance institutions and consciousness of the nation, particularly in that of its policy making elites.

Compelling Reasons for Change

Changing public policy is often no easy task. Institutional inertia and the presence of powerful interests whose benefits could be put at risk because of a change are formidable barriers to overcome. Still, in the face of economic or social disruption, change must follow. According to Bradford, in the case of the Rowell-Sirois Commission, the pressing need was to find ways to deal with the serious economic problems associated with the Great Depression of the 1930's, and later, those of the Second World war and post-war reconstruction.[13] For the Gordon Commission, the need was to address the issues of the concentration of foreign ownership in the manufacturing and resource exploitation sectors of the economy, of increased national reliance on foreign technology and entrepreneurship, of inadequate domestic research and development, and of weak exports of secondary manufacturing.[14] With the MacDonald Commission, whose prescriptive ideas shaped Canadian economic policy in the final decade of the last century, the compelling need was to deal with the concurrent problems of stagflation, declining economic productivity, mounting public debt, and prolonged unemployment, amongst others.[15] The compelling reason for the creation of the Commission on Equality in Employment was not primarily an economic problem but was rather an attempt to address perceived injustices arising out of the conventional wisdom[16] that labour markets in Canada systematically discriminated against women, native people, disabled persons, and members of visible minorities.

Ideas

The ideas which inspired the work of the Rowell-Sirois, Gordon, and MacDonald royal commissions were grounded largely in economic considerations. That is, they were concerned primarily with improving the productive capacity of the nation. By contrast, the fundamental idea which stimulated and sustained the policy discourse about workplace affirmative action or, as it became known in Canada following the release of the Abella Commission Report, employment equity, was the notion of equality. The Employment Equity Act, which flowed from the recommendations of that Commission, marked the emergence of the application of that fundamental idea as a contributing factor (others include the impact of technology, the influence of unions, or shifts in economic activity, amongst others) in how the benefits of employment were to be allocated in Canada.[17] As a principle, equality cannot speak to issues related to the creation of wealth. It can, however, be applied where the objective is not the creation of wealth but rather its distribution or redistribution.

Interests

In Bradford's analysis, the Rowell-Sirois Commission attracted the support of what he has labelled as "liberal technocratic policy intellectuals,"[18] who provided the conceptual bases for policy change.[19] These individuals were primarily economists influenced by Keynesian ideas about the role of the state in the management of the national economy. These ideas also attracted the support from like-minded members of the senior ranks of the federal mandarinate. Bradford also notes that at that time neither business nor labour interests provided alternative ideas which were supported by the majority of their constituencies.[20] For its part, the 1955 Gordon Commission's public philosophy and implementation proposals failed to appeal to a winning combination of supporters and both were, in consequence, largely ignored for a generation.[21] The MacDonald Commission attracted the support of business interests such as the Business Council on National Issues and their intellectual partisans in a number of think tanks,[22] neo-classical economists,[23] and later, the Mulroney and Chrétien governments, both at the political and administrative levels.[24] However, that Commission also witnessed a strong expression of contrary views from a coalition of social interest pressure groups, feminist organizations, and organized labour.[25] The experience of the Abella Commission also presents a number of similarities to both the Rowell-Sirois and MacDonald commissions in terms of attracting the support of target groups, elected officials, and administrators, and to some extent organized labour, for the government's objective of introducing workplace affirmative action legislation. That is to say, the Abella Commission also attracted a supportive coalition which favoured both its interventionist public philosophy and associated implementation ideas.

Institutions

In addition to developing a coherent public philosophy and implementation proposals able to attract the sustained support of influential interests, ideas must also be transformed into an integral part of a nation's institutions if they are to affect change. Thus, many of the recommendations of the Rowell-Sirois and MacDonald Royal Commissions were, in time, incorporated into the governance institutions of the state through legislation and new policy initiatives. Moreover, perhaps more importantly, they became part of the conventional wisdom that Canadians employed to think about the manner in which the country ought to manage its economy. Similarly, the Abella Commission recommendations were adopted (in part, at least) by the Mulroney administration and formed the basis for its Employment Equity Act. Also, as an example of the staying power of those recommendations, they were not only adopted in turn by the Chrétien government but expanded upon. More importantly though, as was seen in Chapters Six and Seven, the assumptions undergirding those recommendations have generally been adopted, not only by pressure groups representing women, native people, disabled persons, and members of visible minorities but also by most elected officials, organized labour, and even some employers.

Contending Discourses

As indicated earlier, governments change policies in response to the demands of the citizenry as expressed by pressure groups representing their interests. In the case of the introduction of workplace affirmative action, the concept of creating a representative workforce enshrined in the Abella Report was justified as a means of promoting equality in the workplace. That notion was previously advocated a decade and a half earlier in the report of the Bird Commission, released in 1970.[26] Specifically, the idea of ensuring equality in the workplace was grounded on the following assumptions: that labour markets systematically discriminate against women,[27] that it is the aggregate experience of the group, not that of individuals, which is important in establishing the presence of discrimination in the workplace,[28] that society has an obligation to provide special measures in support of women in the workplace,[29] that labour markets are not effective mechanisms for ensuring equality of opportunity for women in the workplace,[30] and that state action is the most effective remedy for the adverse effects of discrimination against women in the workplace.[31] These notions were later successfully adapted to the workplace experience of native people, disabled persons, and members of visible minorities in addition to that of women.

These ideas, however, were themselves part of a larger shift in values which emerged in advanced industrial nations following World War II. These new values de-emphasized economic considerations as the dominant objective of society in favour of so-called quality-of-life issues.[32] That is, they signalled a shift in societal values away from an "emphasis on economic and physical security above all, toward greater emphasis on belonging, self-expression, and the quality of life."[33] Inglehart has labelled these new values as "post-materialist," as opposed to the "materialist" orientations that preceded them.[34] Likewise, in a Canadian context, Nevitte notes that the emergence of post-materialist values in Canada involved an increasing concern with women's rights, consumers' rights, environmentalism, and the status of marginalized groups.[35] In a sense, then, societal values in Canada shifted from a materialist preoccupation with fostering economic growth to a post-materialist one of redistributing existing wealth to members of groups deemed to be disadvantaged in some way. This shift in values signalled the waning of influence over public policy decisions for the Keynesian-inspired ideas about managing the national economy which dominated the immediate post-World War II period in Canada and the materialist ethos on which it rested. Moreover, as Ignatieff has noted in somewhat different context, the emergence of the influence of post-materialist values has tended to emphasize inequalities of sex and race while at the same time relegating the materialist inequalities of class and income to the background of public consciousness.[36] As was seen in previous chapters, it was precisely the inequalities of sex and race in terms of the contention that women, native people, and members of visible minorities were unfairly treated in the labour market which was used to justify the introduction of legislated workplace affirmative action. Thus, the recommendations of the Abella Commission clearly reflected a post-materialist ethos.

While both the Mulroney and Chrétien administrations evidently supported the introduction of workplace affirmative action in Canada, neither implemented all of the Abella Commission's recommendations. For example, forty-three of the one hundred seventeen recommendations in that report proposed measures to enhance the educational and training opportunities of women, native people, disabled persons and members of visible minorities but not one of them is to be found in the legislation that flowed from that Report. Likewise, a dozen of the report's recommendations suggested programs to provide state-supported daycare for working parents.[37] Again, none of these recommendations form part of the Act. As Timpson has argued, the Mulroney government viewed employment equity and daycare as entirely separate policy issues.[38] According to her, it acted decisively and quickly on employment equity but failed to do so on daycare. The Chrétien administration followed the example of its predecessor and enhanced the scope and reach of the Employment Equity Act but also never moved to make daycare measures an integral part of it.

Bradford's thesis that ideas influence policy change when they are actively supported and promoted by individuals and groups is confirmed by the material examined in this project. As the evidence presented in Chapter Three indicates, the idea of equality in the workplace advanced by the Bird Commission in 1970 found ready support from women's organizations and from groups representing native people, disabled persons, and members of visible minorities. That coalition of support has endured in the face of the rise of what Bradford has termed a neo-liberal ideology, as evidenced by the decision of the Chrétien administration's decision to expand both the reach and scope of the Act in 1996 as well as its proposal in July of 2000 to increase its hiring, training, and promotion of members of visible minorities until their representation in the public services reaches twenty per cent.[39] While this accounts for the government's introduction of employment equity legislation in Canada, it fails to satisfactorily explain why the legislation has taken on the characteristics that it did and not others.

As is clear from the material presented in Chapter Three, the advocates of workplace affirmative action did not see all of their demands met as a result of the enactment of the Employment Equity Act. An explanation for the government's response to the recommendations of the Abella Commission may be found in Bradford's treatment of the work of the Gordon Commission.[40] With respect to that commission, he argues that its work marked the appearance of the influence in Canadian politics of what he has termed "two distinct policy discourses," one of which relies on market solutions for the country's problems, the other which favours a greater degree of state intervention in the affairs of the nation.[41] The first is largely market oriented and generally unsympathetic to state intervention as a principle in developing public policy. Labelled by Bradford as "liberal continentalism,"[42] the intellectual foundations for this philosophy are to be found in the writings of Milton Freidman and F.A. Hayek,[43] amongst others. The second policy discourse favours state intervention in any aspect of economic activity in order to promote the government's policy agendas. Bradford calls this "interventionist nationalism."[44] Its intellectual parentage can be traced back to the ideas generated by the Fabian Society in Britain and the League for Social Reconstruction, organized in Canada in 1932 by Frank Underhill, F.R. Scott, and others. As Bradford makes clear, both of these discourses endured up to the time of the work of the MacDonald Commission, largely because the proponents of each succeeded in mobilizing an array of interest support. Each discourse was actively promoted by its protagonists, who mounted a spirited defence of their positions in testimony before the MacDonald Commission.[45] Bradford rightly concludes that the business oriented discourse succeeded, through the MacDonald Commission, in moving forward its agenda of market liberalization and state retrenchment. He also correctly concludes that the adoption of the MacDonald Commission recommendations by the Mulroney and Chrétien governments signals a sharp turn towards a neo-liberal economic agenda for the country and advocates in its place a robust interventionist role for the state.[46] However, this presents an incomplete picture of the policy-making dynamics of the time and ignores the influence of his nationalist-interventionist discourse as this applies specifically to state regulation of labour markets in Canada.

In his study, Bradford argues that the MacDonald Commission moved the government to adopt what he terms as a "corporate neo-liberal" economic agenda grounded in the premise of market liberalization, state retrenchment and social adjustment.[47] Similarly, Abu-Laban and Gabriel argue that the progress of efforts at enhancing workplace affirmative action legislation in Canada have been subverted by the adoption by governments of the same kind of neo-liberal norms.[48] Likewise, Timpson contends that the anti-quota rhetoric expressed by the newly-formed Reform Party moved the government to protect employers (as an integral part of the 1996 Act, Sec.6) from having to implement workplace affirmative action measures that would cause them economic hardships, or to hire and promote unqualified workers belonging to the Act's designated groups.[49] All are partly right. The federal government did in fact not adopt all of the recommendations of the Abella Report. Nor, for that matter, did the Abella Report itself meet all the demands of the various pressure groups which presented their views to the Commission. Nevertheless, the evidence presented here suggests that influence of this neo-liberal agenda was more nuanced than what Bradford, Abu-Laban and Gabriel, or Timpson contend. While it is no doubt true that the Mulroney government had political motives that were, in Savoie's view, on a "more conservative track"[50] than its Liberal predecessor, the public policies they adopted could not be attributed exclusively to a neo-liberal ideology. As demonstrated in this project, the Abella Commission was successful in creating a major policy change in Canada in that the legislation that followed from its recommendations, however inadequate the advocates of workplace affirmative action may consider it to be, obliges employers who fall under its jurisdiction to ensure that their workforces reflect, in all areas and at all levels of the enterprise, the demographic makeup of the labour force. This is not an inconsequential accomplishment, particularly in the face of the emergence of a neo-liberal ideology at the time. Nor is it in the spirit of that neo-liberal ideology.

Despite the rise in influence of pressure groups representing women, native people, disabled persons, and members of visible minorities during the late 1960's and 1970's and their drive for state intervention in a variety of areas as a means of rectifying what they perceived as injustices inflicted upon them,[51] that influence, durable and influential as it has proven to be, has never succeeded in completely displacing the neo-liberal position that state intervention in any sphere of economic activity is an assault on the market's ability to function effectively as well as on the liberty of the individual. For example, comments made by government members in the House of Commons debate on second reading of Bill C-62 in 1985 suggest that the views of employers examined in Chapter Five influenced the Mulroney administration's decision to adopt a less interventionist position than that proposed by the Abella Commission report and a more employer friendly stance than what was called for by target groups. For instance, Flora MacDonald, the minister responsible for employment equity at the time, speaking in the House of Commons in March, 1985, in presenting the government's first response to the Abella Commission Report, emphasized, amongst other things, that in introducing legislated workplace affirmative action, the government did not wish to impose major administrative costs on employers nor to intervene unnecessarily in their operations. She also announced that small and medium-sized enterprises would be exempt from the provisions of the legislation the government was in the process of enacting.[52] These were issues raised by employers in the briefs presented to the Abella Commission. In addition, Prime Minister Mulroney linked a mistrust of the bureaucracy with the belief that the government was too big and intruded too much in the marketplace,[53] including, presumably, the nation's labour markets, and would have consequently been reluctant to create the bureaucratic infrastructure necessary to support all of the Abella Commission's recommendations or to meet all target group demands.

Summation

The MacDonald and Abella Commissions carried on their work simultaneously and both were successful in the sense that each was responsible for a major shift in Canadian public policy. Moreover, both were successful for the same reasons: both were created because of a widely perceived need for change, both developed a coherent public philosophy with viable implementation proposals, both attracted the support of a broadly based coalition of interests, both had their recommendations embedded into the governance institutions of the state, and more importantly, both shaped the nature of the policy discourse that followed in their respective areas.[54] Nevertheless, despite these important similarities there is one significant difference between them. This lies in the nature of the policy changes that each precipitated. Thus, according to Bradford, the MacDonald Commission moved the government to adopt a market oriented economic policy framework with a more limited role for the state. Meanwhile, at the very same time,[55] the Abella Commission was successful in persuading the government, and to a large extent, society as a whole, to adopt its vision of a highly interventionist role for the state in the country's labour markets at the expense of the unfettered conduct of those markets. Paradoxically, the Mulroney government adopted both of these conflicting visions during its first term of office and both were retained and enhanced by the Chrétien government which followed it.

This investigation argues that the federal government's decision to enact workplace affirmative action in Canada involved a major shift in public policy in that it obliges what is in effect the creation of a representative workforce in those enterprises subject to its provisions. It also illustrates the validity of Heclo's and Bradford's argument that public policy changes as a result of the interaction of ideas, interests, and institutions, where ideas are the mental constructs by which people order their lives, interests are groups whose objectives are to enhance the benefits their members receive from society, and institutions are the stable, long-term organizations which direct how citizens act as well as the formal and informal values and mores that shape the social preferences of society. It does not, however satisfactorily explain why the Employment Equity Act and its attendant regulations and operational guidelines have taken on their particular characteristics.

An explanation for those particular characteristics is, however, to be found in Bradford's notion of "two quite distinct policy discourses."[56] Since at least 1955 (the year the Gordon

Commission was created), the first, influenced by post-materialist values, has moved the federal government to create an array of social programs and legislation, including workplace affirmative action. The second, generated, in part at least, by a reaction to the first, has forced governments to embrace a more market-oriented approach to public policy. The Employment Equity Act thus exhibits reactions to each of these contending discourses. Both discourses are with us still, as evidenced by the interminable debate over the shape and scope of health care in Canada. Nor, one suspects, is this phenomenon limited to Canada, as the evident divisions in American public opinion and the distinct differences in policy orientation already observed at the start of the 2004 presidential elections in the United States indicate, which has prompted a respected source to label that country as the "50-50 Nation."[57]

The establishment, work, and recommendations of the Abella Commission reflect the presence of a vigorous and influential movement favouring greater state regulation of the nation's labour markets that was grounded in the post-materialist notions of rights and quality of life, as opposed to materialist concerns with productivity and economic growth. The influence of the Abella Commission on the development of public policy in Canada in this respect is to be measured not so much in terms of the government's failure to adopt many of its recommendations, as Timpson, Abu-Laban and Gabriel,[58] or Bacchi[59] suggest. Rather, its importance is to be judged by its success in persuading a majority of "political actors" (both elected and appointed) to adopt the underlying principles embedded in its recommendations as their own. The magnitude of the Commission's achievement in this respect is underscored by the fact that in doing so it ran counter to a pronounced trend by governments of the day towards deregulation, the downsizing of established state agencies and departments, and the privatization of some state functions. This was no mean accomplishment: an achievement that is too often ignored or simply overlooked.

The credit for the success of the work of the Abella Commission in promoting change in public policy in Canada with respect to employment must go in part at least to the conviction, energy, and determination that Justice Abella herself brought to her task. What also contributed to that success was the presence at the time (and for at least a decade after) of a supportive coalition of active and influential pressure groups and reformist administrators, all collaborating to promote workplace affirmative action. But perhaps the most significant factor in ensuring the success of the Abella Commission and the motivating catalyst for all concerned with advancing the notion of legislated workplace affirmative action was the endorsement by society of the idea of creating equality in the workplace. As Victor Hugo wrote more than a century and a half ago, "An invasion of armies can be resisted, but not an idea whose time has come.[60]

1. In Canada, the one possible exception to this was the federal government's legislation which provided for preference for World War Two veterans wishing to enter the federal public service. That legislation also called for returning servicemen to be given back the jobs they left to enter the Canadian armed forces for that conflict. However, the first was restricted to employment with the federal government and did not affect the private sector. The second, which did apply to the private sector as well, was, in essence, a kind of seniority recall arrangement in that the veteran was deemed not to have permanently left the job.

2. Section 5.b(ii) of the Act as amended in 1996 specifically calls for employers to institute policies and procedures and make appropriate accommodations to ensure that members of the Act's designated groups are represented in each occupational group within an enterprise that reflects their representation in the Canadian workforce or those segments of the workforce that such employers normally draw workers from.

3. Isaiah Berlin, "Political Ideas in the Twentieth Century," in Four Essays on Liberty, (1969; rpt. Oxford: Oxford University Press, 1990), p. 7.

4. Richard Simeon, "Studying Public Policy," in Canadian Journal of Political Science, XI, No. 4, 1976, p. 555.

5. Ronald Inglehart, Culture Shift in Advance Industrial Society, (Princeton, NJ: Princeton University Press, 1990).

6. Neil Nevitte, The Decline of Deference: Canadian Value Change in Cross-National Perspective, (Peteterborough, ON: Broadview Press, 1996).

7. Hugh Heclo, "Ideas, Interests, and Institutions," in The Dynamics of American Politics, eds., Lawrence C. Dodd and Calvin Jillson, (Boulder: CO., Westview Press, 1994), p. 375.

8. Heclo, p. 383.

9. Neil Bradford, Commissioning Ideas: Canadian Policy Innovation in Comparative Perspective, p. 15.

10. Bradford, pp. 12-13.

11. Bradford, p. 17.

12. Bradford, p. 15.

13. Bradford, pp. 23-52.

14. Bradford, p. 57.

15. Bradford, p. 103.

16. John Kenneth Galbraith, The Affluent Society, 2nd ed., (Boston: Houghton Mifflin Company, 1969), p. 8.

    Here the term "conventional wisdom" is used in the sense given it by Galbraith: that is "for the ideas which are esteemed at any time for their acceptability."

17. The literature on the subject of equality is voluminous. The following short list represents a plurality of views on this important topic: R.H. Tawney, Equality, (1931: rpt. London: George Allen and Unwin Ltd., 1964); Albert Weale, Equality and Social Policy, (London: Routledge & Kegan Paul, 1978); Amy Gutman, Liberal Equality, (New York: Cambridge University Press, 1980); William Ryan, Equality, (New York: Pantheon Books, 1981); Kenneth Cauthen, The Passion for equality, (Totowa, NJ: Rowan & Littlefield Publishers, 1987); Ronald Dworkin, Sovereign Virtue: The Theory and Practice of Equality, (Cambridge, MA: Harvard University Press, 2000); and Jan Narveson, "Egalitarianism: Partial, Counterproductive, and Baseless," pp. 79-94, as well as Hillel Steiner, :Choice and Circumstance," pp. 95-111, both in, Ideals of Equality, ed. Andrew Mason, (Oxford: Blackwell Publishers, 1998).

18. Bradford, p. 36.

19. Bradford, p. 41.

20. Bradford, pp. 28-29.

21. Bradford. For a full account of this see particularly his chapters entitled "Searching for a New National Policy, 1950-1965: Economic Ideas and Party Politics," pp. 53-80, and "Still Searching, 1965-1975: Economic Ideas and Bureaucratic Politics," pp. 81-102.

22. Bradford, p. 112.

23. Bradford, p. 116.

24. Bradford, pp. 117-126.

25. Bradford, pp. 112-113.

26. Report of the Royal Commission on the Status of Women in Canada, (Ottawa: Information Canada, 1970).

This report will henceforth be referred to as the Bird Commission Report.

27. Bird Commission Report, See Chap. 2, pars. 5, 6, 7, 8; p. 20 ; par. 452, p. 127; par. 454, p. 128; par. 499, pp. 138-139; and par. 567, p. 154.

28. Bird Commission Report, See Chart 2, p. 62; Table 7, p. 63; par. 233, pp. 73-75; Table 10, p. 74; and par. 234, p. 75; amongst others.

29. Bird Commission Report, See Chap. 2, par 342, p. 100; par 406, pp. 113-114; par 422, p. 121; par 427, pp. 122-123; par 460, p. 129; par. 502, p. 139; and par 506, p. 140.

30. Bird Commission Report, See Chap. 2, par. 252, p. 80.

31. Bird Commission Report, See Chap. 2, par. 236, p. 75; pars. 333-336, pp. 98-99; par. 296, pp. 112-113; Chap. 10, pars. 3-4, p. 388; par. 7, p. 389.

32. Inglehart, p. 5.

33. Inglehart, p. 11.

34. Inglehart, p. 5.

35. Nevitte, p. 9.

36. Michael Ignatieff, The Rights Revolution, (Toronto: House of Anansi Press, 2000), p.92.

37. Report of the Commission on Equality in Employment, (Ottawa: Minister of Supply and Services Canada, 1984), pp. 255-269.

38. Annis May Timpson, Driven Apart: Women's Employment Equality and Child Care in Canadian Public Policy, (Vancouver: UBCPress, 2001), p. 126.

39. National Post, July 7, 2000, (http://www.nationalpost.com/home/story.html?f=/stories/20000707/337891.html)

40. Bradford, The detail of this is to be found in his third chapter, entitled, "Searching for a New National Policy, 1950-1965: Economic Ideas and Party Politics," pp. 53-80.

41. Bradford, pp. 62-64.

42. Bradford, p. 63.

43. Both Friedman and Hayek have published voluminously. For a synopsis of each of their views see, Milton & Rose Friedman, Free to Choose, (New York: Harcourt Brace Jovanovich, 1980; and F.A. Hayek, The Road to Serfdom, (Chicago: University of Chicago Press, 1976 edition).

44. Bradford, pp. 63-64.

45. Bradford, pp. 112-113.

46. Bradford, see particularly the concluding chapter, pp. 158-174.

47. Bradford, p. 116.

48. Yasmeen Abu-Laban and Christina Gabriel, Selling Diversity: immigration, multiculturalism, employment equity, and globalization, (Peterborough, ON: Broadview Press, 2002), p. 158.

49. Timpson, p. 181.

50. Donald J. Savoie, Thatcher, Reagan, Mulroney: In Search of A New Bureaucracy, (Toronto: University of Toronto Press, 1994), p. 89.

51. For a detailed consideration of the rise and influence of politically active pressure groups in Canada see, A. Paul Pross, Group Politics and Public Policy, 2nd ed., (Toronto: Oxford University Press, 1992). See also, Leslie. A. Pal, Interests of State: The Politics of Language, Multiculturalism, and Feminism in Canada, (Montreal & Kingsoton: McGill-Queen's University Press, 1993).

52. Debates of the House of Commons of Canada, First Session, Thirty-third Parliament, (Ottawa: Queen's Printer, 1985), p. 2821.

53. Savoie, p. 94.

54. These conclusions are quite similar to those arrived at by Bhatia and Coleman in their study of the respective success and failure of the German and Canadian states to make significant changes to their respective health care systems, who determined that successful policy change needs: First, a consensus has to develop across a broad range of policy elites that the policy problem faced is severe....Second, the challenging discourse is more likely to be persuasive if it appears to be compatible with, if not reinforcing of, core values....Finally, the challenging discourse must offer a convincing cognitive solution to the policy problem at hand. See, Vandna Bhatia and William D. Coleman, "Ideas and Discourse: Reform and Resistance in the Canadian and German Health Systems," in Canadian Journal of Political Science, 36:4 (September, 2003), p. 736.

55. The Abella Commission was created in June, 1983 and submitted its final report in October, 1984. The MacDonald Commission was established in November, 1982 and delivered it final report in August, 1985. Both commissions were created by the Trudeau administration.

56. Bradford, p. 62.

57. John Parker, The Economist: The World in 2004, pp. 25-26. The gist of Parker's argument is that political opinion in the U.S. is now very evenly slit between Democrat and Republican partisans.

58. Yasmin Abu-Laban and Christina Gabriel, Selling Diversity: Immigration, Mulitculturalism, Employment Equity, and Globalization, (Peterborough, ON: Braodview Press, 2002).

59. Carol Lee Bacchi, The Politics of Affirmative Action: Women, Equality & Category Politics, (London: Sage Publications, 1996).

60. Victor Hugo, Histoire d'un crime, (Paris, Hetzel, n.d).

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Appendix A

Text of the Abella Commission's Terms of Reference

The Committee of the Privy Council, having before it a report of the Minister of Employment and Immigration submitting that:

> Whereas the Government of Canada is dedicated to the principle of equality in the world of work and, in pursuance, inter alia, of this principle, Parliament enacted the Canadian Human Rights Act in 1977;
>
> Whereas demographic trends indicate that women will constitute the majority of new entrants into the Canadian labour force in the 1980's, and it is therefore imperative that women are employed to the full extent of their productive potential and from a social point of view to ensure that women receive an equitable share of the benefits of productive work;
>
> Whereas analysis contained in reports of the Special Parliamentary Committee on the Disabled and the Handicapped, the Parliamentary Task Force on Employment Opportunities for the 1980's and the Labour Market Development Task Force established by the Minister of Employment and Immigration indicate the need for further government action to encourage, in all sectors of economic activity, the hiring, training, and promotion of women, native people, disabled persons, and visible minorities;
>
> Whereas the measures taken by Canadian employers to increase the employability and productivity of women, native people, disabled persons and visible minorities have as yet not resulted in nearly enough change in the employment practices which have the unintended effect of screening a disproportionate number of those persons out of opportunities for hiring and promotion;
>
> And whereas the Government of Canada recognizes that it has an obligation to provide leadership in ensuring the equitable and rational management of human resources within its organizations;

it is desirable that an inquiry be made into the opportunities for employment of women, native people, disabled persons and visible minorities in certain crown corporations and corporations wholly owned by the Government of Canada.

The Committee, therefore, on the recommendation of the Minister of Employment and Immigration advises that, pursuant to Part I of the Inquiries Act, a Commission be issued appointing Judge Rosalie S. Abella of the Ontario Provincial Court (Family Division) a Commissioner to inquire into the most efficient, effective and equitable means of promoting employment opportunities, eliminating systemic discrimination and assisting all individuals to compete for employment on a equal basis by:

> a) examining the employment practices of Petro-Canada, Air Canada, Canadian National Railway Company, Canada Mortgage and Housing Corporation, Canada Post Corporation, Canadian Broadcasting Corporation, Atomic Energy of Canada Limited, Export Development Corporation, Teleglobe Canada Limited, DeHavilland Aircraft of Canada Limited, and the Federal Business Development Bank; and
>
> b) inquiring into means to respond to deficiencies in employment practices, including without limiting the generality of the foregoing means, such as an enhanced voluntary program, possibly linked with mandatory reporting requirements and a mandatory affirmative action program;

and to report on the findings of the inquiry.

> In making the inquiry and report, the Commissioner shall give particular attention to:
>
> i) the implications and impact of the various options available to the government, including the socio-economic benefits and costs associated with each option:
>
> ii) the views of the management of the corporations referred to in paragraph (a) on those options;
>
> iii) the views of employees and associations representing employees of those corporations on those options;
>
> iv) the views of associations representing women, native people, disabled persons, and visible minorities on those options:

v) the views of any other interested individual or group, including the management, employees, and associations representing employees in other federal crown corporations.

The Committee further advises that the Commissioner:

1. be authorized to adopt such procedures and methods as she may from time to time consider expedient for the conduct of the inquiry;

2. be authorized to sit at such times and in such places in Canada as she may consider necessary for the purposes of the inquity;

3. be authorized to engage the services of such accountants, engineers, technical advisors, or other experts, clerks, reporters and assistants as she may deem necessary or advisable, and also the services of counsel to aid and assist the Commissioner in the inquiry at such rates of remuneration and reimbursement as may be approved the Treasury Board;

4. be authorized to seek, in any way the Commissioner may consider necessary for the conduct of the inquiry, the assistance of any member of the board of directors, any officer and any employee, of any corporation referred to in paragraph (a) and of any officer and any employee of any department and agency of the Government of Canada:

5. be authorized, in co-operation with the Department of Public Works, to rent office space and space facilities for public hearings as she may consider necessary at such rental rates as are consistent with the policies of the Department of Public works;

6. be directed to report to the Governor in Council no later than six months from the date of appointment: and

7. be directed to file with the Dominion Archivist the records of the Commission as soon as possible after the conclusion of the inquiry.

Appendix B

Text of the letters sent by the Abella Commission Soliciting the Opinions of Groups and Organizations on Employment Equity

A. Letter of June 27, 1983

As you may know, the Government of Canada has just established a Commission of Inquiry on Equality in Employment. The purpose of the Commission is to examine the ways in which access to equal employment opportunities is available to women, Native people, visible minorities and disabled individuals. By concentrating on 11 Crown Corporations, the study will be able to explore these broad areas in a defined context. A copy of the terms of reference is enclosed for your information.

After a series of consultations with interested groups and individuals in Canada, and with the benefit of briefs which have been submitted, a report will be prepared addressing the matters raised throughout the process. In a subsequent letter to be sent next month, I will provide you with details on the preparation and submission of briefs.

If there is anyone or any organization you think would be interested in participating, would you kindly let us know so that we can send the relevant information to them.

I look forward to hearing from you and leaning your views.

Yours very truly,

Judge R.S. Abella

B. Letter of August 5, 1983

As the enclosed Terms of Reference indicate, the purpose of the Commission on Equality in Employment is to:

> "...inquire into the most efficient, effective and equitable means of promoting employment opportunities, eliminating systemic discrimination and assisting all individuals to compete for employment opportunities on an equal basis..."

The four target groups are women, native people, disabled persons and visible minorities.

One of the most important ways in which this Commission can learn about the issues is by getting the views of affected persons or organizations. Because of the six-month term of the Commission does not permit the holding of extensive public hearings, we hope to get the benefit of your opinions by written submissions. These submissions need not be in any formal style or format and can be as brief or lengthy as you wish. We would request, however, given the time constraints, that your submission be in our office by , 1983.

In addition to the issues discussed in the Terms of Reference, we would be interested in your opinions on whichever of the following matters are of particular importance or relevance to you.

1. The relative merits of voluntary versus mandatory programmes for implementing equality measures, including the costs and/or benefits or each option.

2. The advantages or disadvantages of various kinds of mandatory programmes, including:

    1. A reporting requirement
    2. Legislation or other sanctions
    3. The imposition of goals and timetables
    4. Contract compliance
    5. Any combination of these options

3. The determination of appropriate goals and timetables in each target group.

4. The use of tax or other economic incentives to encourage the implementation of equality measures

5. Appropriate monitoring and/or enforcement mechanisms for either a voluntary or mandatory programme.

6. The proper collection, use and analysis of relevant statistical information/data on employees.

7. The desirability of having flexible work patterns, not only as to hours of work (part-time, condensed or enlarged work days or weeks), but also as to worksharing, shift options and the possibilities of leave provisions.

8. The importance of training and development programmes, and the issue of determining eligibility, duration, effectiveness and responsibility for these programmes.

9. Problems in recruiting, hiring and promoting employees, including qualification requirements, selection techniques and the availability of qualified candidates.

10. Resolving problems of arbitrary differences in income, pensions and other benefits, and their relationship to factors such as job selection, classification and segregation.

11. The desirability of child care benefits, including parental and maternity leave provisions and child care facilities, and the determination of whether there is a corporate, governmental or joint responsibility.

12. The possible conflict (whether the corporation is wholly of partially unionized) between established seniority, lay-off and termination, and possible measures for implementing equality such as numerical goals.

13. Your experience with our opinions about the impact of existing government legislation, programmes or initiatives whose purpose is to eliminate or minimize barriers to equality in employment.

14. The impact of technology on the options available for facilitating equality in employment.

15. The impact of a restrictive economic climate on the range and feasibility of the options available.

16. Any other perceived or actual barriers to equality in employment, including educational options, cultural and social expectations, historical disadvantages, physical, geographic or logistic obstacles and attitudinal impediments.

This list is by no means exhaustive. It is intended rather to assist you by giving you some idea of the kinds of issues the Commission will be examining. I am aware that the approach and emphasis will necessarily differ with each target group and the remedies proposed will have to reflect these differences. As well, concerns and experience of both management and labour, which may or may not coincide, will have to be addressed. To ensure that all these perspectives are properly considered, we would like to from as many people and associations as possible.

If you have any further questions, please do not hesitate to contact Lori Brown, Submissions Coordinator, at the Commission office at your convenience.

Yours very truly,

Judge Rosalie S. Abella

Appendix C

The Accreditation of Professional Engineers in Alberta

One of the most pressing concerns expressed by immigrants to Canada with professional standing of some kind in their home countries was (and is) the difficulties they encounter securing professional accreditation in this country. In Canada, this kind of accreditation is provided by a provincially established body such as the College of Physicians and Surgeons of Alberta, the Association of Professional Engineers, Geologists and Geophysicists of Alberta, and their counterparts in other provinces. The position of the Association of Professional Engineers, Geologists, and Geophysicists of Alberta on this issue can be taken as illustrative of the views of most professional associations regarding the accreditation of persons trained in other countries, even though each such association deals with it somewhat differently.

As indicated in the preceding paragraph, the granting of professional accreditation in Canada is the responsibility of the provinces. In Alberta, the province's Engineering, Geology and Geophysics Profession Act accords the Association of Professional Engineers, Geologists, and Geophysicists of Alberta (APEGGA) the exclusive right to license individuals to practice engineering. It also accords that body the authority to investigate complaints against members of the profession and to discipline those members for unskilled practice or infractions of its code of professional ethics. That authority includes the right to withhold or remove an individual's license to practice. An important part of the body's code of ethics is the requirement that practitioners assume professional responsibility for their decisions and hold themselves accountable for their actions as engineers. Aside from governing the activities of its members to ensure maintenance of standards and professional ethics, APEGGA, in conjunction with similar bodies in the other provinces and the Territories, is heavily involved in establishing the standards that universities apply in the teaching of engineers and in monitoring the work done in those institutions to ensure that what is taught is consistent with good engineering practice and in keeping with advances in technology. That process is co-ordinated by the Canadian Council of Professional Engineers, an association made up of the various provincial Engineering licensing bodies.

In assessing the credentials of persons from outside Canada APEGGA, applies the same standards for accreditation as it imposes on individuals trained in Canada. One way in which this is done is through international agreements with similar bodies in other countries. Under these reciprocal agreements the participating countries accredit each others' engineers as fully qualified professionals. Currently, APEGGA has such agreements with Australia, Hong Kong, New Zealand, the United Kingdom, and the United States. It should be noted here that it is possible that not all engineering training in any of these countries would necessarily be recognized in Canada. Only the graduates of those institutions identified by the equivalent licensing body in these countries would be accorded automatic accreditation in Alberta.

The second manner in which APEGGA evaluates the training and experience of engineers outside Canada is by assessing the quality of training and experience possessed by the individual. In some cases, experience has shown that certain universities in France, Germany, Scandinavia, or Central Europe graduate highly skilled engineers. These graduates may be required to write a Confirmatory Examination to test their overall knowledge and abilities in engineering. In the case of individuals from other institutions or countries, APEGGA requires them to submit transcripts and copies of degrees from the institution where they trained, as well as references as evidence of experience as engineers, in the same manner as it does for graduates of Canadian Universities. If either is found to be below standard, the applicant will be required to write examinations equivalent to those given to Canadian engineering students so as to test their knowledge and skills in particular fields or specialties.

It is with the latter individuals that delays most often occur. First, checking the educational references provided by the applicant can take months, or even years, depending on the promptness with which institutions or former employers respond to a request for transcripts or work experience. Additional delays are incurred when such documents have to be translated. And finally, the APEGGA members who oversee this process are volunteers and can devote only a part of their working days to it. Finally, delays also occur because an applicant may have an inadequate command of English (or in Quebec, French). APEGGA normally requires that applicants have enough command of English to successfully pass the TOEFL language examination.

Contrary to some misconceptions, APEGGA licenses as engineers anyone who can demonstrate acceptable academic qualifications, technical competence, and relevant work experience. It is not generally known that someone without a university degree can be licensed to practice as an engineer in Alberta, providing that individual can successfully pass the examinations prescribed and administered by APEGGA and otherwise meet the competence and experience standards that are applied to university graduates.